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Publications

COMMISSION OF INQUIRY INTO THE
USE OF DRUGS AND BANNED PRACTICES
INTENDED TO INCREASE ATHLETIC PERFORMANCE

B E F O R E:

THE HONOURABLE MR. JUSTICE CHARLES LEONARD DUBIN

HEARING HELD AT 1235 BAY STREET,
2nd FLOOR, TORONTO, ONTARIO,
ON WEDNESDAY, AUGUST 23, 1989

VOLUME 76

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(i)

C O U N S E L:

R. ARMSTRONG, Q.C. on behalf of the
Ms. K. CHOWN Commission

R. BOURQUE on behalf of the Canadian
Track and Field Association

J. DePENCIER on behalf of the Government
of Canada

T. BARBER on behalf of the Sport
Medicine Council of Canada

A. PRATT on behalf of Charles
Francis

J. FREEDMAN on behalf of Wilf Wedmann

P. FOURNIER on behalf of Jean-Guy
Ouellette

T. O'SULLIVAN on behalf of Rob Gray

P. KANE on behalf of Steve Findlay

A. BUCKSTEIN on behalf of the Ontario
Track and Field Association



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---Upon commencing.

THE COMMISSIONER: Mr. Buckstein.

MR. BUCKSTEIN: Good morning, Mr.
Commissioner.

5

CECIL SMITH: Recalled

--- EXAMINATION BY MR. BUCKSTEIN:

Q. Mr. Smith, I would like to draw your
attention to Exhibit No. 262, the correspondence between
10 yourself and the then Minister of State for Fitness and
Amateur Sport, Otto Jelinek.

I just want to clarify, in your letter of
March 6, 1985 to Mr. Jelinek you specifically stated that
you did not or do not condone the use of drugs by an
15 athlete, but that your rational for the proposal you were
presenting to Mr. Jelinek with respect to the selection of
criteria for carding was simply a more equitable carding
selection criteria. Is that correct?

A. That's correct.

Q. Also in that March 6, 1985 letter and
in your March 26, 1986 letter to Mr. Jelinek, you make
reference to the assistance of medical personnel in the
administration of banned substances.

I would simply like to read those two
25 excerpts to you.

5
In the March 6, 1985 letter in the third paragraph, you include a sentence which says, and I quote:

"The astute athlete doesn't just swallow pills or inject himself any old way, he or she is 'coached' by astute medical people and coaches with exercise physiology backgrounds."

10
And then in your March 26, 1986 letter you state:

"Another question that I would like to ask, What would be your reaction if Canadian medical practitioners were found to be helping athletes 'beat' the system."

15
Do you recall what it was that caused you to include these two specific references in your letters?

A. It was general, general knowledge again while travelling internationally and speaking to my English counterparts that certain medical practitioners were indeed behind the use of banned substances in sport.

20
I hear it in 1985 the mention of the name, although I never met the gentleman until 1987, Dr. Astaphan. So, that was in the back of my mind at the time when I wrote the letter. What would be Canada's stance if they ever find a medical practitioner certified, responsible for prescribing or giving away or whatever,

selling banned substances.

Q. Now, looking at the correspondence generally with the then Minister, Mr. Jelinek, were you satisfied with the responses that you were receiving?

5

A. I wasn't -- obviously I wasn't satisfied with the responses that I was receiving. I could understand, reading between the lines, that I was hitting home on a very sensitive nerve, and that Mr. Jelinek or his advisors, the civil servants I suppose, weren't too sure on how to answer, but the answer that I was getting I was far from satisfied because all I was trying to do is to simulate the thinking at the Sport Canada ministerial level that as a Canadian, as somebody who seems to be in the know, we may have a problem, and I would like you to do something seeing as you are our major funding agency.

10
15
20
25 Q. Following up on that general question, a more specific question, the letter of Mr. Jelinek of May 14, 1985 in which he effectively tells you he is not interested in what you have to say as an official of the OTFA, he wants all communications --

THE COMMISSIONER: That's not quite fair, Mr. Buckstein.

MR. BUCKSTEIN: I admit I am paraphrasing, but --

THE COMMISSIONER: Don't paraphrase it,
read it.

MR. BUCKSTEIN:

5 Q. All right. In Mr. Jelinek's letter he
says, and I quote:

"As an official of the Ontario Track and
Field Association you are, however, aware of
the fact that it is the Canadian Track and
Field Association which develops and
recommends its proposed carding criteria to
Sport Canada. I would suggest, therefore,
that you submit your proposal for a 'Drug
free' world ranking list to your national
body for consideration. Such
recommendations must be made by the track
and field community through the CTFA."

10 15 Getting that type of a response, what was
your reaction?

20 A. Well, again, as I said a little
earlier, I was never happy with the responses. When I
received this response, I suppose I sort of lost interest
because you can only hit your head against the wall so
many times.

25 THE COMMISSIONER: I thought you then took

it up with CTFA?

THE WITNESS: I was just going to say but I then got into dialogue with Glenn Bogue at the time and said this is the type of response that I have got, but I recognize you can't go to the Minister because there is a process. They have to go through the sport consultant. And that was that.

I mean Glenn was sympathetic. The CTFA has always been sympathetic with the carding, but we did have dialogue.

MR. BUCKSTEIN:

Q. Given your position as an executive of the Ontario Track and Field Association, did you feel that Mr. Jelinek's response in this May 1985 letter was a fair response?

THE COMMISSIONER: Well, that's not -- I don't understand that. He said he wasn't satisfied but he went to the CTFA and pursued it with them.

MR. BUCKSTEIN: Well, I realize he is not satisfied with the answer he is getting; however, now I am asking if he believes in his opinion that it is a fair response coming from the Minister to deal with the CTFA.

THE COMMISSIONER: Well, how else were they going to deal with it? I don't understand it. The CTFA

are the ones that proposed the carding system in consultation with Sport Canada.

5 MR. BUCKSTEIN: That's true. I am simply asking Mr. Smith in his opinion whether or not he felt it was a fair response.

10 THE COMMISSIONER: Whose response, the CTFA's response?

MR. BUCKSTEIN: No, the Minister's response of May 14, 1985.

15 THE COMMISSIONER: All right.

MR. BUCKSTEIN:

Q. Mr. Smith, do you feel that it was a fair response?

20 A. A disappointing response, but I obviously can recognize the process, obviously, because I work in the sport. I knew what he was saying. And I did talk, as I said, to Glenn Bogue.

THE COMMISSIONER: I thought you spoke to Findlay, too, didn't you, because Findlay --

25 THE WITNESS: Oh, yes, that was later, sir.

THE COMMISSIONER: Because Findlay then pursued the matter internally.

THE WITNESS: Yes, that was later. But as

an individual, and I have said this to Glenn, as an individual I was writing letters to Mr. Jelinek because in the capacity of sport, I couldn't write to Jelinek. The process is your sport consultant. You don't go above someone, you go through the process. And the chances are if you go through the process, you may never reach the Minister.

5 But as an individual, I could write a letter as a concerned Canadian and hope that that letter would get to the Minister, which I think it did.

10 MR. BUCKSTEIN:

Q. All right. Switching topics now, I would like you to turn your attention to Exhibit 265, which is the chart of the 1984 and 1988 Olympic Games, the comparison between the then existing Canadian records, the COA standards, and the IAAF standards.

15 You touched on this chart at some detail yesterday. I would like to just amplify it with you if I could.

20 Ms. Chown already spoke to you in comparison of the COA standard as it then existed as compared to the Canadian record. And we touched on the number of events where the COA standard in fact equalled or exceeded the Canadian record at that time.

5

I believe you have also got an interesting statistic that you have compiled which compares the IAAF standard and the COA standard for the 1988 Olympics as compared to the world ranking for that year 1988. I was just wondering if you could tell us about that, please.

10

A. Yes. What I simply tried to do was compile a median or an average of each individual event, which I did. The number of athletes in the world in 1988 who achieved the IAAF standard during the year 1988, women, was 111.

15

THE COMMISSIONER: Is that for all the special --

THE WITNESS: Yes, 111 per event.

THE COMMISSIONER: That's the IAAF standard?

THE WITNESS: The IAAF standard.

MR. BUCKSTEIN:

20

Q. Just to clarify, that's an average for each of the events?

A. Yes, an average, pure average.

THE COMMISSIONER: That's 111 for each event; 111 for each event?

THE WITNESS: Yes.

25

THE COMMISSIONER: I am sorry. Go ahead.

THE WITNESS: For the men it was 98. Now, we take a look at the COA standards, and for the women it is 60, and for the men 75. I would consider that a source of concern.

5

MR. BUCKSTEIN:

Q. Now, I understand in fact given the numbers that you have just told us about there is quite a discrepancy in the women's side between the COA standard and the IAAF standard. In fact, the COA standard is almost just a little bit more than half of the IAAF standard, 60 over 111.

A. Uh-huh.

Q. For the men's events, it is a little bit closer, 75 over 98; although, I note that in the men's pole vault it has somewhat skewed the standard and there is somewhat of an anomaly.

Mr. Commissioner, if you look at the chart for the men's pole vault for the 1988 Olympics, the Canadian record at the time was 5.44 meters. The COA standard was 5.40 meters. And the IAAF standard was 5.45 meters.

In fact, Mr. Smith, this is one of the events where the COA lowered the IAAF standard?

A. Yes, and it caused us all sorts of

concern, Mr. Commissioner.

Originally, the COA came up with a standard of 5 meters 65. And, of course, after we in Canadian track and field came down from the CN Tower, we said, look this is absolutely asinine.

5 THE COMMISSIONER: I gather that you discussed these standard with the COA?

10 THE WITNESS: We were always giving an opportunity through the head coach, Gerard, and I would be feeding him and other people would be feeding him information. He would then go along to the technical director, Jack Lynch, and they would --

THE COMMISSIONER: The Technical Director of the COA?

15 THE WITNESS: Of the COA.

THE COMMISSIONER: Yes.

THE WITNESS: To try to negotiate whatever it is you could negotiate.

THE COMMISSIONER: Right.

20 THE WITNESS: And at that time, and in this particular event, the pole vault, they listed 5 meters 65 and I did some -- well, I didn't do any analysis, actually. I just said that's absolutely crazy because again we are going to have anyone in the event.

25 So, Gerard managed to negotiate that one

down. And I think we used the Rome result, the Rome World Championship result to come up with 5 meters 40. But as you can see, that then gave an anomaly because the IAAF standard is 5 meters 45, but I won't go into that because that becomes complicated.

5

MR. BUCKSTEIN:

Q. The other anomaly, because it was lowered to 5.40 meters, in fact in the 1988 world rankings, I believe you have told me that according to the ATFS Annual, the Association of Track and Field Statisticians Annual, there were 154 performers world wide that met that standard?

A. Yes.

Q. So, that if my quick mathematics would be correct, if we took out the pole vault from the COA average equation, the COA average would in fact be in the sixties also?

A. That's quite correct. That's made a significant difference.

Q. I would like to ask you to, again looking at the 1988 Olympic Game chart, compare, if you would, the COA and IAAF standards to the all-time Canadian performances in those particular events.

20

And I believe you told me that with respect

to the COA standards in the men's 100 and 200 meters there were seven Canadians all-time who had met those standards?

A. That's correct.

Q. Not necessarily all of whom who would
5 still be active in 1988?

A. No, that's over the last 100 years.

THE COMMISSIONER: What's that of 10.29?

MR. BUCKSTEIN: Yes, 10.29 for the 100
meters, and 20.74 seconds for the 200 meters.

10 THE WITNESS: When we say all-time, Mr.
Commissioner, we mean all-time.

THE COMMISSIONER: All-time, I understand.

THE WITNESS: Just in case.

15 MR. BUCKSTEIN:

Q. So, for instance, in the 800 meters,
just to emphasize the point, the COA standard was 1.46.17,
and I believe you told me two Canadians all-time had
achieved that standard, one of whom was Bill Cruthers back
20 in 1946?

A. That's correct

A. That's correct.

Q. And of course he was no longer active in the 1988 Olympic year, so there was only one active performer who had achieved that standard?

5

A. That's correct.

Q. Now continuing along with the men's events, then, we had the 100 and 200 where there are seven performers all time who had met the COA standard.

10

THE COMMISSIONER: The 9.83 for the 100,

that was the Rome record?

THE WITNESS: Rome, yes.

THE COMMISSIONER: Go ahead.

MR. BUCKSTEIN:

15

Q. In the marathon, that is the event with the highest number of Canadians all time, more than ten all time had achieved the 2 hour 15 minute standard?

A. M'hmm.

20

Q. The discus throw, I believe you told me, was six performers?

A. Yes.

Q. The shot put four performers, and all others were three or less. In the women's events --

25

THE COMMISSIONER: I'm sorry, had met the COA standard you're talking about?

MR. BUCKSTEIN: That's right.

THE COMMISSIONER: So had achieved the COA standard?

MR. BUCKSTEIN: That's right.

5

MR. BUCKSTEIN:

Q. And staying with the men's events, then, the IAAF standards in the track --

10 THE COMMISSIONER: Well let's go back, though, and see how this actually worked out. How many men competed in the 100 meters for Canada in 1988?

THE WITNESS: At the Olympic Games or --

15 THE COMMISSIONER: These are the Olympic Games in 1988. How many men did we have entered? Who qualified, Canadian sprinters?

THE WITNESS: 10.29, again --

THE COMMISSIONER: Well you know the names that were there, don't you?

THE WITNESS: Yeah, three.

20 THE COMMISSIONER: Three? That's all we're allowed to enter, three in one event?

THE WITNESS: M'hmm.

THE COMMISSIONER: So we had our complement for the 100 meters; is that right?

25 THE WITNESS: I believe we had a full

complement. I could be corrected on that, but off the top of my head, I believe we had three.

THE COMMISSIONER: And what about the 200?

5 THE WITNESS: I believe we had no more than two. I think one.

THE COMMISSIONER: In the 200?

THE WITNESS: Cyprian Enweani.

COMMISSIONER: Pardon?

THE WITNESS: And maybe Courtney Brown.

10 Yeah, two; could have been two.

MR. BUCKSTEIN:

Q. Was Atlee Mahorn also in that event?

A. And Atlee Mahorn, that's correct.

15 Q. So there would have been a complement of three athletes at the Olympics?

A. Yeah. I'm going solely from the top of my head. I don't have the --

20 THE COMMISSIONER: And what about the women's 100 and 200? Did we have a full complement there?

THE WITNESS: No, we had two in the women's 100, Bailey, Angela, and Issajenko, Angela Issajenko.

And in the 200 meters, I think we had either one or two. Again I can't remember.

25 THE COMMISSIONER: Well, we can check.

THE WITNESS: That's easily collected, but I can't remember right now.

MR. BUCKSTEIN:

5 Q. If I might be of assistance to perhaps refresh your memory, did Julie Rocheleau not also run the 100 meters at the Olympics and was eliminated in the early rounds?

10 THE COMMISSIONER: I'm talking about those who qualified and ran for the Olympic team.

THE WITNESS: Yeah.

THE COMMISSIONER: I think there was a full complement there, I thought?

THE WITNESS: Maybe.

15 THE COMMISSIONER: All right. We'll check that, Mr. Buckstein. Go ahead.

MR. BUCKSTEIN:

20 Q. Now staying with the men's events for the moment, the IAAF standards, looking at the IAAF standards now compared to the all-time Canadian performances, on the track event side there were two events which had ten or more Canadians that had achieved the IAAF standard; is that correct?

25 A. Yes.

Q. And the others ranged from two in an event, which would be the steeple chase, all the way up to a high of eight per event?

A. M'hmm, that's correct.

5

Q. Now in the women's events, in the COA standard, the leading event, if we can call it that, would be the women's long jump where nine Canadians all time had met the COA standard; is that correct?

A. That's correct.

10

Q. Then the marathon for the women, seven Canadians all time had met the standard; the 1500 meters, six, and all other events were four or less?

15

THE COMMISSIONER: I think you explained though, Mr. Smith, didn't you, that some people were deemed to be eligible? I think you've called it a "reasonable probability" that they could make the standard they got --

20

THE WITNESS: Yes. As an example, in the women's long jump, originally the COA standard was the 6 meters 73 and the Canadian record is 6 meters 61. This is in 1988. That was negotiated down to 6 meters 31, and because of that, we managed to get one extra Canadian on the team with that performance.

THE COMMISSIONER: Go ahead, Mr. Buckstein.

25

MR. BUCKSTEIN:

Q. Then looking at the IAAF standards in the women's events compared to the all-time Canadian performances, in the track events, each one of the track events, there were at least seven Canadians all time who had met the IAAF standard?

A. In which event was that?

Q. All of the women's track events?

A. Oh, yes.

Q. And in the field events, depending on the event, either four or five all time had met the IAAF standards?

A. Correct.

Q. Now being at the COA standard, particularly in the women's 100 meter hurdles, 13.08 seconds, we note in your chart that the Canadian record was 12.78 seconds. In fact, that was a record set in the Olympic year; is that correct?

A. That's correct, 1988.

Q. And prior to the Olympic year, nobody had run 13.08 seconds, of Canadians?

A. No. That would have been a Canadian record.

Q. And the 13.08, the one person who achieved it, that's Julie Rocheleau; is that correct?

A. That's correct.

Q. I'm just wondering if you could amplify
a little bit more for us something that you touched on
yesterday when you were looking at, I believe it was the
5 men's 800 meters, and that's the disparity in performances
at the Olympics themselves between the COA and the IAAF
standards. I'm just wondering if you could perhaps
amplify that for us?

A. Was that the point where I was saying
10 about the number of qualified --

Q. Yes.

A. Seven athletes? In the 1988 Olympic Games, in the 800 meters, the COA standard was 1:46.17 seconds and only 7 athletes achieved that standard up to 15 and including the quarter final. However, during the world, 66 achieved that standard.

Q. Now would it be fair to say that the difference between the COA and the IAAF standards, you've already discussed it in terms of absolute terms of the 20 world ranking looking at the average per event --

A. M'hmm.

Q. -- would it also be fair to say that the difference between the two standards was also prevalent at the Olympic Games themselves in terms of the 25 performances achieved?

A. Without question. I think, historically speaking, if you look back at any major championships, in particular the Olympic Games, people don't necessarily all set their best performances at the Olympic Games because the name of the game there is to win. So consequently, especially in the distances 800 and up, most of the races are tactical and time is incidental. This bears out the thought that not many people will run that fast; they are there to qualify. And I believe that some Canadian athletes who could have been there, who weren't there, may have progressed to the quarter final. Again, you do have the luck of the draw. It just depends what heat you draw and who you are up against.

Q. What do you perceive --

THE COMMISSIONER: Excuse me a minute. How are the IAAF standards set; do you know? What do they follow?

THE WITNESS: They use the ATFS expertise, and the people in different parts of the world take the hundredth best, usually the hundredth best ranking and compile some statistical compilation on behalf and for the IAAF, but it's usually done by the ATFS and the technical committee people, and they usually look at about the hundredth best performance.

THE COMMISSIONER: And then what, average

them out to get your figure?

THE WITNESS: Well, believe it or not, I was part of establishing the World Junior Championships in 1986, and I'm tell you how we set the standards.

5

THE COMMISSIONER: Well, just tell me how the IAAF set their standards, because that's what you're comparing today.

10

THE WITNESS: Well as I said, they use certain people within the ATFS along with the technical committee, and they will then derive or decide, depending on the number of people, I suppose, what the standards should be. It has been my experience that they've always been looking at about the hundredth best. Then they would calculate, well, how many people would that attract into the competition, and so on and so forth. It's not necessarily scientific.

15

As I was going to say, at the 1986 World Juniors, we established the standards in 1985, and at that time it was myself, and Istvan Gyuli of Hungary, who was the IAAF technical delegate, and he and I, we put our heads together, and it was like plucking straws. I mean, it wasn't scientific. He was using me and I was using him and that's how we came up with the standards for entry into the 1986 World Junior Championships. I believe that's the system that they use for the World

20

25

Championships and the Olympic Games, is just people with a statistical background, people from the IAAF getting together and deciding what should be a fair standard of entry.

5

THE COMMISSIONER: And how does the COA do theirs? Do you know how they do theirs?

10 THE WITNESS: Well, I think what Jack does, he gets his slide rule out after he reads the IAAF Handbook, which you saw yesterday, and he makes calculations, and he's solely looking for reasonable probability of Canadian athletes in track and field finishing in the top 16.

10

15

THE COMMISSIONER: I see.
THE WITNESS: That's the thrust of the Canadian Olympic Association. It's not necessarily Jack's philosophy. Jack is an employee, so he's carrying out the wishes of the Board of Directors and that's his role.

20

So he comes up with the standards, and usually they are taken as is, but he does occasionally waiver as he did in 1988 with Gerard on, I think, some events. He came down slightly. They were still high, but he did come down slightly. And that's how the COA sets the standard. They will not set the standard, because I've argued with them that they should do the same setting of standards one year prior to the competition, but they

25

won't. They wait until the IAAF book is published.

THE COMMISSIONER: I see.

THE WITNESS: When they get that, then they publish their standards, but that's less than a year. So
5 in other words, come 1992, generally speaking, Canadian athletes won't know what the Olympic standard will be at the COA level. They will know at the IAAF level, but they won't know what it is at the COA level probably until about September, October of the year, which is less than a
10 year, and you've missed the competition season. I argued with Jack on this for 1988 that because you set the standard so late, Canadian athletes lost the competition season in 1988. They lost all summer because the standards didn't come out until the fall.

15 That's just an aside.

THE COMMISSIONER: All right. Mr.

Buckstein?

MR. BUCKSTEIN:

20 Q. Just to clarify one point that you were just discussing and that's the IAAF 100th place to establish the IAAF standard. Obviously it's not the 100th place performance in the year of the Olympics. Is it the year immediately preceding?

25 A. Preceding.

Q. So the 1988 Olympics would be roughly based on the 100th performance in the world in 1987?

THE COMMISSIONER: Are you sure about that? Are you sure it's the 100th performance? In other words, if you rank 100th in the world, you are going to qualify under the IAAF standard?

5 THE WITNESS: NO.

THE COMMISSIONER: If I had the 100th fastest time in 1987 --

10 THE WITNESS: M'hmm.

THE COMMISSIONER: -- would that be my standard for the 1988 Olympics for the IAAF?

15 THE WITNESS: No. What that means is that I will look at your performance as the hundredth best. I would then look at the various countries at large, and I'll either decide to use your performance of 10.44 --

THE COMMISSIONER: Right.

20 THE WITNESS: -- and I'll say 10.44 is acceptable. We could have approximately 100 athletes from all over the world, and we have 182 countries, we'll have approximately 100 athletes from all over the world entered in the competition by achieving the standard. That's --

25 THE COMMISSIONER: How many heats are there?

THE WITNESS: Well, the heats would be

5 determined by what's the entry. In other words, you're an eight-lane track, sometimes it's a nine-lane track. If you look at 130, it's just a matter of dividing eight or nine into the total figure, and then you'll just say, four will progress to round no. 2, and four will progress to quarter final no. 1 and three plus two will qualify from the qualifiers of the semi-final, and three plus two will proceed to the final. So it's just like a perimeter. It just gets narrower as you get towards the point.

10 THE COMMISSIONER: Well, were there 100 meter sprinters at the Olympics this year?

 THE WITNESS: Yeah. I would say there were many rounds. There always is in the 100 meters.

15 THE COMMISSIONER: I just wonder how many were there?

 THE WITNESS: Many countries will send -- this is one event where everyone seems to send a rep., whether they do the standard or not.

20 THE COMMISSIONER: So you could have three times how many countries?

 THE WITNESS: You can have three per country, but a lot of countries won't achieve 10.44s, but they'll send a rep. anyway. Like Tonga will send one.

25 THE COMMISSIONER: All right. Go ahead,
 Mr. Buckstein.

5 MR. BUCKSTEIN:

Q. With the hundredth best performance,
you mentioned that the IAAF would also look at the
countries involved.

A. M'hmm.

10 Q. Does it take into account, then, into
its equation, a country that is rich in talent in a
certain event? For instance, the United States, it's
fairly well known that they have a lot of very good 100
meter sprinters. The hammer throw, it's well known as an
Eastern European and particularly Soviet-dominated event.
So if in the top 100 in the world, let's say in the hammer
throw, 40 of them are Soviets but the Soviets can only
actually enter three in the Olympics, will the IAAF then
lower their standard to allow other countries in?

15 A. I'm not an expert in that area. I can
only go on what I've been told by the people who have done
it and no, they wouldn't necessarily do it like that.
They would just set the standard that they feel is fair.
20 And if you look, now that you've picked the hammer, the
hammer standard at the IAAF level is 72 meters, which is
quite respectable to many, many countries, but in Europe,
that's nothing.

25 Q. All right. Just one final question on

this area before we move away from it. What do you perceive to be the overall effect of the imposition of the COA standards over and above the IAAF standards?

.5 A. Well, I think I said it yesterday that as part of Canadian track and field, I think I speak for many, many people when I say that we resent the fact that a body comes to us every four years and tells us what the standards are going to be for entry into the competition, because during the four years' buildup towards the 10 Olympics, we as a sport governing body have been responsible, without any assistance, direct assistance anyway, from the Canadian Olympic Association. Now that may change because of Calgary, so I hasten to get that one in quickly.

15 But nevertheless, because we have an international federation, and not all sports have international federations but we have an international federation, we feel, and I know a number of the coaches feel the same way, that in Canada, given the fact of the quality that we have and the depth that we have and the size of the country and the population base, the IAAF standard is sufficient for Canadian athletes to aspire to, and anything harder is totally unacceptable to us. We have hammered this point home for many, many years.

20 25 THE COMMISSIONER: Well who is "we"? Is

that the CTFA rule?

THE WITNESS: No. When I see "we", the CTFA's meeting. I know the people, the coaches. We discuss these things, and I know that the position of the Canadian Track and Field is one that it would be very nice if we had the standards which were just IAAF because it would help us in our overall development, because it would give us an opportunity, especially in the field events' side amongst women, it would give us an opportunity to at least recognize the best Canadian. Even though they may not be super best, we recognize them as champions of Canada. They will not embarrass us; they will not embarrass themselves. So if they don't embarrass the Association and they most certainly don't embarrass themselves, why can't they go to the Olympics?

THE COMMISSIONER: Well, you can send one now anyway under the rule?

THE WITNESS: Yes.

THE COMMISSIONER: But you can't send three?

THE WITNESS: Yeah, we can send one, but invariably we don't.

COMMISSIONER: I see.

THE WITNESS: Because we have got to go through the middle party, which is the COA, because you have to negotiate that.

5 And I am saying if we took out the middle party, the COA standard, and just left it purely for the IAAF standard, and we were responsible just for compiling our team and submitting it just like TACK does to the American Olympic Association, here is our team, that's it, but we can't do that.

10 THE COMMISSIONER: Mr. Smith covered this ground yesterday, Mr. Buckstein.

THE WITNESS: Yes.

MR. BUCKSTEIN:

15 Q. I would like now to turn your attention to the magazine Athletics for which you mentioned you are the publisher.

20 I believe in your evidence and also in the evidence of Rolf Lund, the President of the Ontario Track and Field Association, you have talked about there being two primary information vehicles, if I can call them that, by which the OTFA disseminates information to its membership. The monthly newsletter which goes, I believe Mr. Lund said, to club representatives and from there it is hoped that the athletes themselves would have access to

the information in the newsletter, and Athletics Magazine?

A. Yes.

Q. I am just wondering if you can tell us, you briefly touched on as to who gets Athletics Magazine, all individual members of the Association get it?

5 A. All members of the Association receive Athletics Magazine.

Q. I believe you also mentioned the magazine is available on newsstands and sold by subscription?

10 A. Oh, yes, it goes nationwide and outside Canada.

Q. And members of the CTFA and Sport Canada would get that magazine as well; is that correct?

15 A. I believe everybody gets it.

Q. What is the general format and purpose of the magazine?

20 A. It is to, as you said, to disseminate information without some vehicle -- this is another thing that I discovered, I suppose, when I came to Canada was the lack of information that was getting down to the athletes simply because at that time, in 1973, there was no national magazine although one was attempted by Dave Lac (phon).

25 So, when Athletics came around, I know as an

individual and with the support of everyone else, that I was determined to make this as topical and up to date as possible to give Canadian athletes an opportunity to know what is going on, to have an opportunity to compare themselves, which could be motivational when they can compare themselves with athletes from West Germany or GDR, to allow them to read interviews on Sebastian Coe or Steve Cram or Steve Scott.

5

Without this vehicle, they wouldn't have these opportunities. They wouldn't know where they stood in their rankings, even. They wouldn't know the top 10 in Canada. They wouldn't know the Canadian records.

10

So, to me it is absolutely essential to hold the country together coast to coast. And if you don't have that, then the sport will continue, but there will be a tremendous void.

15

Q. Would it be fair to summarize the magazine by saying that it is produced for an educational benefit, general information. There is also news, comment, editorial, and statistics and photographs; that is basically the content of the magazine?

20

A. Yes.

THE REGISTRAR: 266.

THE COMMISSIONER: All right.

25

MR. BUCKSTEIN: Now, I put before you, Mr.

Commissioner, a fairly hefty package, 121 pages, which is entitled Excerpts from Ontario Athletics --

THE COMMISSIONER: We have quite a few of these in our library already.

5

MR. BUCKSTEIN: We are going to be referring to some of them, not too many I assure you, but some of them in detail this morning.

THE COMMISSIONER: We can't go through all of these, please.

10

MR. BUCKSTEIN: No, we definitely won't go through all of them. What you have before you are excerpts from Ontario Athletics from 1976 to 1981 and Athletics from 1981 to 1989.

THE COMMISSIONER: Yes, I see that.

15

--- EXHIBIT NO. 266: Excerpts from Ontario Athletics
1976 - 1981, and, Athletics
1981 - 1989

20

MR. BUCKSTEIN:

Q. And that all excerpts are from the column entitled Inside Track which is put out and written by Cecil Smith unless otherwise noted in this particular package.

25

The excerpts that are included in this

package, Mr. Smith, are essentially all of the excerpts
that have been produced in the magazine --

A. Yes.

Q. -- from its inception dealing with
5 asteroids; is that correct?

A. That's correct.

Q. I have gone through it and I have
summarized it into a number of categories. You have got
information dealing with international suspensions and the
10 international scene generally?

A. Yes.

Q. Imposition of testing, ethics of
coaches involved with the use of steroids, carding and
standards --

15 A. Yes.

Q. -- which you have made clear here
yesterday and again here today that you feel are related.
The imposition of the carding selection criteria and the
standards to meets would be related to drug-enhanced
20 performances. The Canadian scene generally. Information
also as to where further information may be obtained about
steroids.

A. Yes.

Q. There are four instances I think that
25 are referred to in this package where you are recommending

to the readers that they can get information in either the Sports Medicine Council of Canada, the CTFA, or the IAAF?

A. Yes.

Q. Then also there are a number of major articles submitted by others other than yourself.

Now, if we could, I would just like to touch briefly on a couple of the selections in this package.

On page 2 of the package which comes from the February - March 1979 issue, you talk here for the first time about the suggestion there is a call for testing to be imposed at the national championships. And, of course, in 1979 I believe it would be your evidence therefore that there was no testing at that time at the national championships; is that correct?

A. Yes, I think so, yes.

Q. And then on package 47 in your Inside Track column coming from the September 1976 issue, you make the comment, and I quote from the third paragraph:

"Testing at the national championships was a good move, random testing will be better."

So, this, in fact, is your first call in the magazine for random testing?

A. Yes.

Q. Is that correct?

A. 1986.

Q. September 1986?

A. Yes.

Q. In fact this article, this column, was written immediately after the positive testing of Messrs. 5 Gray, Dajia and Spiritosa at the national championships in 1986?

A. Correct.

Q. You repeat that call for random testing in the April - May 1987 issue on page 54 in which you say, 10 if I may quote in the first complete paragraph on page 54:

"While on the subject there appears to be concern about the introduction of random testing. One group is for it while another group is against it. It is very difficult to understand why anyone would be against random testing especially now when an even greater sophistication is being employed to avoid detection at competitions where drug testing is known to be carried out.

National championship testing for all intents and purposes outside of detecting uppers downers and amphetamines is not an effective way to spend drug testing money."

A. That's correct.

5 Q. And then going one step further on page
73 of this package which is an excerpt from the February -
March 1988 issue, an issue in which I note the cover story
is in fact devoted to drugs in sport, A Special Report on
The Shocking Death of West German Heptathlete Birgit
Dressel.

10 You include in an article written by you
entitled the Drug Menace, this is the second column of the
article, the first two complete paragraphs when you say
and I quote:

15 "Random drug testing controlled by a group
not affiliated with sports must surely come
very soon, whereby an accredited official
can 'suddenly' appear and 'order' an athlete
to produce a specimen there and then. Cries
of horror may rent the air with this
suggestion, but what is there to fear if
you're innocent?

20 To institute non-sport controlled random
testing on all athletes, they should be
asked to sign a waiver when they register in
Canada, identifying that they have read and
agreed to be tested at random intervals.
Any athlete who refuses to sign a waiver or
give a sample should not be selected or

receive any support from Canada."

Just following up on this suggestion, would it be your evidence and your suggestion that in fact what should be done is that when an athlete registers --

5

THE COMMISSIONER: I think he said that yesterday, Mr. Buckstein.

MR. BUCKSTEIN:

10

Q. I just wanted to follow through on the membership, the actual membership when an athlete registers with CTFA, which in the case of an Ontario athlete would be through the OTFA, that they should sign such a waiver and that that waiver should be utilized nation wide; is that correct?

15

A. Yes, that could be another effective tool --

THE COMMISSIONER: You are talking about a consent rather than a waiver.

20

MR. BUCKSTEIN: That's true. I am just using the terminology that Mr. Smith has used in fact in the article.

THE COMMISSIONER: Well, waiver would be the inappropriate term, it is consent he is talking about.

25

MR. BUCKSTEIN: Very well. I would agree with that.

THE WITNESS: That could be another effective tool to help the sport.

MR. BUCKSTEIN:

5 Q. Now, turning back to page 4 of the package. In April and May 1981 you devote a considerable length of your Inside Track column to the ethics of coaches involved in the administration of steroids. I am just wondering if you can perhaps summarize that for us in terms of your thesis in that article.

10 A. I suppose when I was writing this, rightly or wrongly, I always felt that the chances are the coach may be aware, not in all cases, but may be aware of an athlete using performance enhancing drugs.

15 I am not saying that the coach was facilitating or obtaining the dreaded steroids, but they may be aware. Therefore, if they were aware, what should they do.

20 And I just went on and gave my overview of what I think a coach should do when they become aware that their athlete is using performance enhancing drugs, because I do think a coach has a responsibility, because as has been mentioned many times, a coach has virtually complete control over an athlete, more so sometimes than 25 the parents. And that if this coach is aware that there

is something untoward going on, he as an individual, responsible as a coach, certified in our system, should do something about that.

5 So, I was just referring to the ethics of coaching -- of coaches.

Q. And in fact you make the reference in the very final sentence of that section that for the ethical coach, it is a simple answer?

A. Oh, yes.

10 Q. As to what he should do?

A. Yes, a simple answer, but I suppose life is never that simple.

Q. Now, just turning over the page in the June 1981 issue of the magazine, under the heading Soviet, 15 Austrian Women Suspended in which you report that two international athletes have been suspended, you include a personal note at the bottom. And this would appear to be the first time in writing in your magazine that you have called upon the COA to look at the standards that they are 20 using for selection to the Olympics --

A. What page is that?

Q. Page five.

A. Oh, sorry.

THE COMMISSIONER: No, he is talking about 25 the penalties not being adequate enough. Is that you are

talking about "Soviet, Austrian women were suspended".

5 MR. BUCKSTEIN: That's right. And in the paragraph that immediately below that begins: "Note", Mr. Smith says the athlete should in fact be sentenced or suspended for life. And he states, and I quote:

"Again this shows why the ridiculous standards set by our Canadian Olympic Association -- "

10 THE COMMISSIONER: Well, the point he is making here is that 18 months suspension was not adequate and he advocates a life banishment.

15 MR. BUCKSTEIN: That's correct in the first half of that paragraph. In the last half of the paragraph he deals with the COA standards.

THE COMMISSIONER: All right. Well, we have heard enough about the COA standards, Mr. Buckstein. We have that fully on the record now.

20 MR. BUCKSTEIN: Yes. I am just showing -- drawing to the Commission's attention the fact that --

THE COMMISSIONER: It doesn't help to repeat it over and over again.

25 MR. BUCKSTEIN: I am just drawing to the Commission's attention the fact that Mr. Smith has been expounding upon that view point since June of 1981.

THE COMMISSIONER: I know. He has told us that.

MR. BUCKSTEIN:

Q. Additionally if I can perhaps close in
5 terms of looking at these Athletic excerpts by referring
you to page 51, an excerpt from the February - March 1987
issue of the magazine. In your Inside Track column, I
note that you have included a reference entitled To Die
For A Medal. And I quote:

10 "Prior to the 1984 Olympic Games in Los
Angeles, a survey of U.S. athletes was
taken. They were asked 'If a drug were
available that would guarantee a gold medal
in L.A., but also meant certain death in five
15 years -- "

THE COMMISSIONER: That's in Dr. Goldman's
book. We have read that.

MR. BUCKSTEIN: I am just again drawing to
the attention of the Commission that the magazine has been
20 used as a vehicle to put across the information to the
membership of the OTFA and the other readers --

THE COMMISSIONER: I understand that.

MR. BUCKSTEIN: -- of the magazine.

THE COMMISSIONER: I understand.

25 MR. BUCKSTEIN: Thank you very much, Mr.

Smith.

THE COMMISSIONER: It was a very helpful magazine. Thank you.

MR. BUCKSTEIN: I have no further questions.

5

THE COMMISSIONER: Mr. DePencier.

Thanks, Mr. Buckstein.

I have been reading this magazine over the last several months, Mr. Smith, since I was appointed to the Commission.

10

THE WITNESS: Good.

THE COMMISSIONER: Wait until you read my report.

THE WITNESS: That's why I said good now. I will take out a subscription then.

15

THE COMMISSIONER: Yes, Mr. DePencier.

--- EXAMINATION BY MR. DEPENCIER:

20

Q. Mr. Smith, my name is Joseph DePencier. I am here on behalf of Fitness and Amateur Sport and the Federal Government.

25

Yesterday I believe you said that with respect to the track and field carding standards you were not aware of any studies or analysis that had been done over the years of those standards. Did I understand that correctly?

A. As it pertained to track and field. I am aware of -- I am aware of some studies.

5 Q. Yes. And in speaking to you I understand that you are aware of a study of the entire Athlete Assistance Program that was commissioned by Sports Canada in the summer of 1985 and conducted by two academics at Queen's University?

10 A. Yes, that's correct. That was anchored, I believe, by Dr. Dan MacIntosh, who was also the author of Sport -- the Politics of Sport -- Sport and Politics in Canada, I believe, he is the author of that book at Queen's University.

15 And I do believe that the main thrust of the book was that or they talked about Canadian government or Sport Canada being the employer and the athlete being the employee, and the expectations on Sport Canada were so high yet they weren't paying their employees a reasonable salary.

20 I think that I contributed to that book. I was one of resource people.

Q. Well, I think, sir, in fact you will find that the report cites evidence from the majority of athletes indicating that they were quite satisfied with the level --

25 A. That's right.

Q. -- and quality of support they were receiving at that time?

A. Yes. I have constantly said, sir, that I am only talking track and field, I cannot speak for 5 gymnastics or swimming.

MR. DePENCIER: Mr. Commissioner, I understand your staff has a copy of the study and Ms. Hoffman in her further evidence will be speaking to that.

THE COMMISSIONER: Thank you.

10

MR. DePENCIER:

Q. The second point, Mr. Smith --

THE COMMISSIONER: What date is that report?

15

MR. DePENCIER: The report is dated August of 1985 by Professor MacIntosh, who is the lead author

THE COMMISSIONER: Yes, thank you.

MR. DePENCIER:

Q. Mr. Smith, in Exhibit 262, which is the package of correspondence between yourself and Otto Jelinek, I think you brought to our attention the letter of May 14, 1985 in which Mr. Jelinek recommends that you work through the CTFA to bring a new set of carding criteria forward?

25

A. Yes.

Q. And that's in 1985. And we have the package of documentation, the correspondence between yourself and Mr. Findlay, Exhibit 264.

5

A. Yes.

Q. Which concludes with a letter dated April the 2nd, 1985, from Mr. Findlay to yourself.

A. Yes.

Q. Indicating and it begins:

10

"Met with Bill Heikkila and Ole Sorensen --"

A. Yes.

Q. Those are both officials with Sport Canada?

A. That's correct.

15

Q. " -- on Wednesday, April 1st, and they were very receptive to what we are trying to do in this area."

And the letter goes on to talk about hope that a proposal will be taken to Sport Canada.

20

A. That's correct.

Q. And I think your evidence was that however no proposal, to your knowledge, was actually taken forward, and you are not exactly sure in the end what happened?

25

A. That's correct.

Q. So, this is two years after the Minister had suggested that you bring a proposal forward; in fact, a proposal never was taken to Sport Canada. Am I correct?

5 A. That's correct, there was no proposal taken to Sport Canada. I don't know the date of the letter that you have, I have got it in my package, but what is the date on the letter there?

Q. April 2, 1987.

10 A. That's right. Of Mr. Jelinek's letter?

Q. No, Mr. Jelinek's letter was May 14, 1985?

15 A. That's right, but I was having dialogue then with Glenn Bogue. And like everybody, you know, we all got different things --

THE COMMISSIONER: This refers to a meeting with Mr. Heikkila and Mr. Sorensen of Sport Canada.

THE WITNESS: Yes.

20 THE COMMISSIONER: In which they indicated they were receptive to the suggestion that they were waiting for a proposal --

25 THE WITNESS: That's right. I was under

the belief that there was an application made, and I don't know what happened with the application. But no study was carried out, that's correct.

MR. DEPENCIER: To the extent it is important, Mr. Commissioner, Ms. Hoffman may be able to help us.

THE COMMISSIONER: Thank you.

5

MR. DEPENCIER: Thank you, Mr. Smith.

THE WITNESS: Thank you.

THE COMMISSIONER: Any other questions?

Mr. Freedman.

MR. FREEDMAN: Thank you, Mr. Commissioner.

10

--- EXAMINATION BY MR. FREEDMAN:

Q. Mr. Smith, my name is Jeremy Freedman, I am here for Mr. Wedmann.

A. Yes.

15

Q. I just want to discuss with you briefly your interactions with Mr. Bogue. I take it that you dealt with Mr. Bogue over some period of time?

20

A. Yes. We would -- we would be talking quite frequently. I would talk to all the staff within the sport, we would be talking to one another. But, yes, I talked with Glenn.

Q. On a number of occasions and about a number of issues?

25

A. Yes. I mean, I can't recall all the issues, but we would talk about the day-to-day issues

periodically and things of that nature, that's correct.

Q. Now, yesterday Ms. Chown asked you some questions about a conversation you had with Mr. Bogue concerning the York Center?

5

A. Yes.

Q. I just wanted to ask you a few questions about that.

A. Yes.

Q. Just very briefly to go to the transcript of Mr. Bogue's evidence.

10

Mr. Commissioner, I am just going to read one paragraph from page 8474. This is about the conversation he had with you.

15

In testifying as to why he called you, he says:

"He knows the ropes [being yourself]. He knows what's happening. He has a very strong connection throughout the world.

20

He's somebody you can trust with a delicate issue, that it wouldn't get out and I really needed his advice to say that, is it time to go ahead to York center and break it open or forget about it."

25

Now, I take from that that Mr. Bogue clearly trusted you. And is it fair to say that your sense of

your interactions with him was that he had trust in you?

A. I suppose so, yes.

Q. Now, I believe you testified yesterday
that concerning your telephone conversation with Mr. Bogue
about York center that you didn't have a very vivid
recollection of a particular phone conversation; is that
correct?

A. That's correct.

Q. So, you don't recall one specific
situation where he called you up excitedly and said "I
have got a way to catch Ben Johnson on steroids", for
example?

A. No, that would have stuck out in my
mind if that had come about.

Q. That's right.

A. But I don't recollect being told about
having a mole in the system.

Q. In fact, to the extent that you have a
recollection of that phone conversation at all --

THE COMMISSIONER: I think was there any
discussions with Mr. Bogue about your concerns about York
center? After all you are the one who I think --

THE WITNESS: I guess --

THE COMMISSIONER: Excuse me, who has
exhibited concern about York center for many years?

THE WITNESS: Yes, I told him --

THE COMMISSIONER: Did you mention the names of the people that you were suspicious of like Thibedeau and Mark McKoy?

5

THE WITNESS: Yes, the same names were coming up --

THE COMMISSIONER: So, you did discuss those names with Mr. Bogue?

THE WITNESS: Yes, yes.

10 THE COMMISSIONER: All right.

THE WITNESS: And as I said yesterday that, be careful, Glenn, because there is no hard evidence.

THE COMMISSIONER: Well, be careful, what he going to do that you warned him to be careful about?

15 THE WITNESS: Well, I had a lot of faith in Glenn --

THE COMMISSIONER: He was going to take some step that you cautioned him about being careful about. What was it?

20 THE WITNESS: I am not sure what step he was going to take, whether he was going to approach Wilf or whether he was going to take it to the Board of Directors --

THE COMMISSIONER: He must have said something to you that he was going to take some action for

some reason because you cautioned him. I am not suggesting wrongly, you cautioned him "you have got to be careful".

5 THE WITNESS: He talked about taking the stuff to Wilf, I believe it was Wilf or the Board of Directors, I can't remember exactly what he was going to do with the information that he had.

THE COMMISSIONER: Take the stuff? I am sorry I didn't hear, take the --

10 THE WITNESS: Well, the allegations that he said that something to the effect that "I have information on drug use at the center". And he didn't mention to me, at least I don't recollect, who he got the information from.

15 THE COMMISSIONER: I understand.

MR. FREEDMAN:

Q. Well, if I might be of assistance, Mr. Commissioner, would it not be possible that what you were cautioning him against was simply doing anything with any allegations that he couldn't prove? That's what you might have been cautioning him about being careful for?

A. Without question.

Q. Okay.

25 A. Without question, I along with --

THE COMMISSIONER: Well, I mean, I suspect that somebody would say what they are proposing to do and why and that's why you would caution them. He must have told you something about what he had in mind.

5

THE WITNESS: Well, I suppose, you know, in a general chit chat you are always concerned for one another.

THE COMMISSIONER: I understand.

10 THE WITNESS: And if by chance he proceeded and it somehow leaked out, he may end up in no support from anywhere, and he could find himself on the hot seat, because unless he got documented evidence and proof, an Affidavit, a sworn statement --

15 THE COMMISSIONER: No, Mr. Freedman is trying to pursue what conversation you had with Mr. Bogue and --

THE WITNESS: Well, that was generally it.

MR. FREEDMAN:

20

Q. Well, I suggest to you that Mr. Bogue didn't set out a specific plan of action for you, just the same way he didn't tell you that he had a source inside the club who was Desai Williams?

25

A. No, there was no plan, as far as I could gather. There was no plan it was just general chit

chat for a few minutes, I presume.

Q. Precisely. Despite your trusting relationship with him, he didn't tell you about Desai Williams being his source?

5

A. No, because that would have jumped out at me.

Q. He didn't tell you anything about Desai Williams being --

A. No.

10

Q. -- willing to cooperate in a sting plan?

A. No. I did not know about Desai until this Inquiry.

15

Q. Now, to go to Mr. Bogue's evidence again very briefly. And I am looking, Mr. Commissioner, at page 8520.

Mr. Bogue says that when he told you about his source --

20

THE COMMISSIONER: What did Mr. Bogue say he said to Mr. Smith? You might read that to him.

MR. FREEDMAN: That's exactly what I am about to read, Mr. Commissioner.

MR. FREEDMAN:

25

Q. He says:

"He confirmed what I was saying, that there
was a real serious problem at York center."

This is you he is saying the same as Mr.
Smith.

5 "That it's been known for years, Glen, this
is nothing new. We have known this down
here for years."

What I would like to know, Mr. Smith, is is
that what you said to him or is Mr. Bogue mistaken in his
10 recollection of your phone conversation?

A. I can only say that I most probably
said there is a lot of rumor, conjecture, and smoke that's
emanating from the center. I will go along with that.

I can't remember the exact words. I mean if
15 Glenn used them words, it's fair game, I suppose, but
whether or not I did actually use them words I can't
remember.

I know I would have said, yes, there is a
lot of rumor down here, there is a lot of smoke; but
20 that's -- I will go along with that.

Q. Given that you advised Mr. Bogue to be
cautious because he didn't have any hard evidence upon
which to move forward, I take it that there was nothing
that he said to you about the York center at that time
25 during that phone conversation which led you to believe

that he had any hard evidence, isn't that correct?

5 A. I didn't know he had hard evidence. He alluded to the fact that he had some evidence, but whether it was a written documentation or hearsay or whatever, I don't know.

Q. There was nothing in what he imparted to you that led you to believe that he had hard evidence, isn't that correct?

10 THE COMMISSIONER: I am sorry, he said he alluded to him that he had hard evidence, but he didn't know what it was.

THE WITNESS: He did allude.

MR. FREEDMAN:

15 Q. That he had evidence?

A. That he had some sort of evidence.

Q. But he didn't describe the nature of that evidence at all?

20 A. No, no, I learned about the evidence here.

Q. In fact, it was your impression at the time that it wasn't hard evidence from what he said; isn't that right, because you have suggested to him "be cautious".

25 A. It could have been --

THE COMMISSIONER: Ask him what he said, Mr. Freedman.

THE WITNESS: There could have been no more than what I had, conjecture, rumor and speculation.

5

MR. FREEDMAN:

Q. Now, Ms. Chown suggested to you yesterday as a preface to her questions that this phone conversation with Mr. Bogue took place in the fall of 10 1985. And what I would like to know is do you have any independent recollection of the timing of that phone conversation?

A. Gee, no. I honestly I wouldn't -- jacket between --

15 Q. It was Mr. Bogue's evidence that this consideration took place in the fall of 1985, but it will be Mr. Wedmann's evidence that it in fact took place in July or August of 1986. I just wanted to know whether you had any recollection one way or the other?

20 A. No, honestly, I can't remember. I mean you talk a lot. I mean, I really can't remember whether it was in the fall of '85 or July of '86. I am not going to say one thing or another. I mean both guys are right.

Q. Okay.

25 A. I don't know.

MR. FREEDMAN: Those are all my questions, thank you.

THE COMMISSIONER: Thank you. Any further questions. Ms. Chown?

5

MR. PRATT: Mr. Commissioner, I have a few questions.

THE COMMISSIONER: Oh, Mr. Pratt, sorry. I didn't look over that way.

10

--- EXAMINATION BY MR. PRATT:

Q. Good morning, Mr. Smith, my name is Alan Pratt, and as you probably know by now I represent Charlie Francis.

A. Yes.

15

Q. You were telling Mr. Buckstein a few moments ago that you had a view as to what the ethical coach was required to do upon learning that an athlete he coached was using anabolic steroids, and I don't have the benefit of the article in which you discussed that. I wonder if you could tell me that what view is.

THE COMMISSIONER: He was musing about it.

20

THE WITNESS: I just expounded on what I had written as an individual that I personally feel that if a coach is aware of an athlete using banned substances they have a responsibility simply because a coach in many

cases is more powerful to that athlete than the father and the mother. And that's fact.

MR. PRATT:

5 Q. I understand that, sir. What I was trying to find out is what do you feel the coach is required to do?

A. They should first, I believe -- well, I can only go on what I would do, I suppose. If I was made 10 aware -- if I became aware that an athlete that I was handling was on some sort of banned substance, I would first check it out. I would try to get it out of the athlete or the parents. I would try to figure it out.

15 Once I got that information, I would sit down with the athlete, and I would try to counsel the athlete against the use of steroids.

But I think at that time if I could convince the athlete to get off the banned substances, it would stay between him or her and I.

20 I don't think I would take it to the top authorities at that time.

However, if I felt that I couldn't get the truth but still had the suspicion, I think as a coach and as a member of the organization, I would then have a duty, 25 I think anyway, to take it to the next step and tell

someone that I believe the athlete that I am handling is using banned substances. And that's not being smart in retrospect.

5 I do believe that's what I would do. But I would first try to keep it confidential and try to break the athlete off using banned substances.

Q. Would you expect, sir, that a good coach would be aware from observing an athlete whether that athlete is using anabolic steroids?

10 A. I would like to believe that we have many good coaches, and I am convinced that they should know, not necessarily in all cases, because some athletes are big in nature, big in stature.

Q. Yes.

15 A. And you have got to be careful just because they are very big --

THE COMMISSIONER: You could watch, as you did, the dramatic improvement in performance.

20 THE WITNESS: That's right. I would be looking for other factors, I suppose, if like I was coaching in the field events, jumps, I would be looking for other things.

25 However, having seen a dramatic improvement in one or two athletes, well, that would be enough to have switched me on to have sat down with my athlete and said,

"look, I am under the impression that you are doing something behind my back. Now, what's the truth, are you or aren't you?"

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5 Q. So if a coach were a good, professional, observant coach, had all the history of an athlete at his disposal, a record of performance improvements, perceptions of changes in physiology, you would expect a good coach would be able to determine with some degree of certainty whether an athlete was using anabolic steroids?

10 A. I would expect that if the coach is in a day-by-day, four hours a day, per week, 365 days of the year, you would get to know that athlete very, very well, but you'd have to be in that close relationship to detect differences other than statistics.

15 Q. So that if there are athletes in --
THE COMMISSIONER: But you, yourself, noticed the dramatic change, say, in Mark McKoy's physique?

THE WITNESS: Yes.

THE COMMISSIONER: You weren't with him every day?

20 THE WITNESS: No, I was an external observer.

THE COMMISSIONER: But you're an experienced person in the business?

25 THE WITNESS: Yes. Well remember, I've known these guys since the 70s when they started. So I

know --

THE COMMISSIONER: You wouldn't see them every day, obviously?

5 THE WITNESS: No, I wouldn't see them every day, and that's where you can see a dramatic improvement, when you don't see someone for a while and you suddenly see them, they say hey, you're looking old, or something. People say that to me, you know.

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MR. PRATT:

Q. None of us are getting younger. So would you agree with me, sir, that if there are athletes in Canada or elsewhere being coached by coaches, and those athletes are using anabolic steroids, that coaches who continue to work with them are either not observant enough and not good enough as technical observers of their athletes or they are simply, in your view, not ethical if they continue to work with them?

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A. You could take it like that. I think there are many other -- you know, there are factors that you must take into consideration. I don't think that's a "yes" or "no" answer. I mean, you could be -- let's take the case of Brunnie Surrin (phon). He's high in the mind of people simply because he ran fast. In my mind, in following his statistical improvement, he didn't do

anything untoward because, statistically, he already ran a 10.16 and a 10.19.

THE COMMISSIONER: Well that's pure speculation, now.

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MR. PRATT: Yes. I don't want to pursue this point.

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THE WITNESS: But to the general public and especially, unfortunately, to the press, they hooked on to something else, and I tried to tell them that he's ran 10.19 and 10.16. So he's ran 10.14; big deal.

MR. PRATT:

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Q. I'm not really interested in pursuing that in this instance, although there may be some evidence about the National Championships later on.

20

Now I take it, sir, that the entire basis of your correspondence with Mr. Jelinek that we've been referring to is predicated upon your conclusion that, at the world level in track and field, performances have been inflated by anabolic steroids?

A. That's my opinion, gleaning the information from others, seeing the number of athletes suspended, seeing the suspended athletes come back and still go on to win championships, yes.

25

Q. And that's partly based upon what you

perceive as a differential in performances between tested meets and meets that are either obscure or not tested?

A. Yes.

5 Q. So, in other words, your conclusion was that whether drug testing is foolproof or not, at least the prospect of testing would cause athletes to enter these major championships without the recent taking of drugs?

A. That's correct.

10 Q. All right. So in this, you would agree with -- I take it you are generally aware of the evidence of Mr. Francis in this Inquiry?

A. Yes.

15 Q. So you generally agree with that general premise?

A. Well, yes. You know, I didn't know the degree of sophistication, and obviously it was very sophisticated because it was 10 years.

20 Q. You would agree, I take it, that at that elite level anabolic steroids would appear to work if indeed the differential between the tested meets and the other meets is so large? There is a significant factor in performance?

25 A. Yes. We learned again from Dr. Donike that even their testing leaves a lot to be desired.

5 Q. And you've given us substantial evidence and the benefit of your views that the various sports policies, including the carding standards, the COA standards, create pressures on athletes which may cause them to seek external aids to their performance?

A. Unquestionably I'd go along with that.

10 Q. I'd like, sir, to turn to your letter very briefly. It's a letter of March the 6th, 1985, to Mr. Jelinek, which is contained in Exhibit 262. In particular, I'd like to turn to the second page of that letter, and you made a suggestion to the Minister.

15 THE COMMISSIONER: What date, please?

MR. PRATT: This is the letter, Mr. Commissioner, of March 6th, 1985, and it's included in Exhibit 262.

15 THE COMMISSIONER: Yes.

MR. PRATT:

20 Q. And you had said, in your concluding paragraph of this letter, sir, you made a suggestion that the Minister seek the help of athletes like Dave Steen -- and just to pause, this is the elder Dave Steen who was the uncle --

A. Yeah, Dave Steen's uncle.

25 Q. -- of the decathlete?

A. Let's get that straight, yes.

Q. -- Bruce Pirnie, Mike Mercer, Jean-Paul Baert, Ivan Pintaric, Mike Cairns, Valentin Chumak, Bill Heikkila, et cetera, and you go on to say:

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"These people know what's going on. It's imperative that they be asked for their input on how to handle the drug problem in track and field."

Now, sir, we know from the evidence here that at least --
10 I believe there has been evidence that Mr. Steen has discussed openly, this is Mr. Steen Sr., his one-time use of anabolic steroids and that Mr. Pirnie testified at some length here about his use of anabolic steroids. I don't believe we've heard from the others, but it's quite clear
15 that at least some of these people you're suggesting have in fact used anabolic steroids to aid their performances?

15

A. That's not correct. I was only putting a list of names of former athletes, now coaches at the national/international level and others, just coaches at the national/international level, who I felt could offer their expertise because they've been on the world platform.

Q. I see.

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A. If you speak with Valentin Chumak from the URS, you're speaking to a man of great experience from

5 the Russian system who is ranked fourth, I think, or seventh in the world in the hammer. He's now a Canadian citizen. If you speak with Ivan Pintaric, you're speaking to a very knowledgeable coach, ex-Yugoslavia. Why not make use of this expertise that we have in Canada? It's there.

10 Q. But do you think these two gentlemen in particular would be able to assist this Commission in telling us about the extent of anabolic steroid use in their countries, their former countries?

15 A. I think that if they were talked to, they would at least give the Commission the opportunity to hear what they may have to say. I don't know what they would have to say. All I'm saying is that we have eminent people in Canada who have travelled the world, who have competed on the international platform --

20 THE COMMISSIONER: We have considerable evidence on that already, Mr. Pratt.

MR. PRATT:

Q. All right. So you are simply suggesting to the Minister that these people could help him?

A. Yes.

25 Q. All right. It turns out however, and

my point simply is, sir, that it turns out that whether you knew it at the time, that some of these people, at least we know two of them have been involved in an anabolic steroid program and have been frank and have come forward and declared their use and have used their experiences as a platform to educate and speak to others --

5 A. Yes.

Q. -- and to help solve the problem?

10 A. Yes.

Q. Now, I would like to turn with this in mind to the recent resolution of the Ontario Track and Field Association which Mr. Lund discussed. I take it -- I'm dealing with the one dealing with removing the records, stripping the records from admitted steroid users.

15 A. Yes.

Q. I take it, sir, you were a part of the decision-making process which passed that resolution?

20 A. As an ex officio member, of course I have dialogue. I don't pass or make resolutions. I can have input, that's correct.

Q. But do you agree with your resolution, sir?

25 THE COMMISSIONER: I don't know how that's

going to advance anything, Mr. Pratt. We've covered that in length, Mr. Pratt.

MR. PRATT: I simply wanted to --

5 THE COMMISSIONER: Mr. Smith was the executive director at the time, and he and I have discussed the matter.

MR. PRATT: If you think it's inappropriate to ask him to answer, Mr. Commissioner --

10 THE COMMISSIONER: Well, it has been done, and whether he agrees with it or not, it's an official resolution of the OTFA. Why get into internal problems?

MR. PRATT:

15 Q. Finally, sir, you made some somewhat disparaging comments, perhaps in jest yesterday, relating to drug testing, and I think at one point you even said that you felt the laboratories should return some of the money they had been collecting. I realize that was partly in jest, but I wonder if --

20 A. Was it?

Q. Pardon me?

A. Was it?

Q. Maybe that's the question I should ask you. Were you joking about it, or could you --

25 A. Well, I was only reacting to the

inquiry and listening to some of the evidence --

THE COMMISSIONER: It has been demonstrated I think, Mr. Pratt, that the tests have been ineffective in the sense that they do not detect anabolic steroid users for those who are taking them and know how to avoid being detected.

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MR. PRATT:

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Q. And your comment, sir, simply reflected your agreement with that general thrust of the evidence here?

A. Yes.

MR. PRATT: Thank you. Those are my questions.

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THE COMMISSIONER: Thank you. Any other questions?

May I just ask you about one matter I don't think we've covered. Has the OTFA itself got a policy on doping control?

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THE WITNESS: No, sir, we don't.

THE COMMISSIONER: Well, what happens to your -- you've got how many athletes subject to the jurisdiction of the OTFA?

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THE WITNESS: Well, we have a membership of a few thousand.

THE COMMISSIONER: And they rank up to 19 years? Would there be more?

5 THE WITNESS: No, there would be younger and older. What I was going to say, however, is we fall under the jurisdiction of the IAAF which hands down its responsibility to the Canadian Track and Field.

THE COMMISSIONER: Yes.

10 THE WITNESS: We are members of Canadian Track and Field, so consequently, we directly or indirectly do have a drug policy. We follow the Canadian Track and Field's policy for drug use.

THE COMMISSIONER: But is there anything officially done on that? Do you have --

15 THE WITNESS: No, we follow the rules. The CTFA rules --

20 THE COMMISSIONER: As you know, under the CTFA, for example, every sports federation since '83 -- I'm sorry. Under Sports Canada, the CTFA as one of the national sports organizations has a commitment in their proposal for funding to set forth their doping control policy, and also they require every athlete to sign a contract, who is carded, to sign an agreement with the CTFA --

THE WITNESS: Yes.

25 THE COMMISSIONER: -- that they will not

use or be in possession of anabolic steroids, amongst other drugs?

THE WITNESS: Correct.

5 THE COMMISSIONER: And that's a condition of the carding system?

THE WITNESS: Correct.

THE COMMISSIONER: Do you have that similarly in Ontario for your carded athletes?

THE WITNESS: No.

10 THE COMMISSIONER: All right. Well, thank you very much for your assistance here, Mr. Smith. You've been on the stand for a long time. Thank you very much for your help.

15 We'll take our morning break now before we start the next witness.

--- A short break was taken.

--- Upon resuming.

20 THE COMMISSIONER: Mr. Armstrong.

MR. ARMSTRONG: Thank you, Mr. Commissioner. My next witness is Mr. Bruce Savage.

THE COMMISSIONER: Mr. Savage. Good morning.

25 MR. BOURQUE: Mr. Commissioner, before we

get started, I wonder if I might introduce you to Mr. Pierre Fournier, who is appearing as counsel for Mr. Ouellette.

5 THE COMMISSIONER: Mr. Fournier. Very nice to meet you. Welcome aboard.

MR. FOURNIER: Good morning.

MR. BOURQUE: Mr. Fournier practices in Sherbrooke, Quebec.

10 ROBERT BRUCE SAVAGE: Sworn

--- EXAMINATION BY MR. ARMSTRONG:

THE COMMISSIONER: Mr. Armstrong?

15 MR. ARMSTRONG: Yes, thank you, Mr. Commissioner. What I propose to do is file a brief of documents, a copy of which sits on the corner of your desk. The Registrar has a copy, and I think everybody else who is involved directly with this witness has a copy. Could it be marked as the next exhibit?

20 THE REGISTRAR: It would be 267.

THE COMMISSIONER: Thank you.

--- EXHIBIT NO. 267: Black binder containing the c.v. of Bruce Savage and 21 other documents

MR. ARMSTRONG: This follows the same format as the brief of documents filed in the case of Mr. MacWilliam. It also contains Mr. Savage's curriculum vitae.

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THE COMMISSIONER: Thank you.

MR. ARMSTRONG:

Q. And if I may, Mr. Savage, take a moment to highlight your c.v., I note that you attended York University for a three-year period between 1964 to '67 in the Faculty of Arts. Then you proceeded to Osgoode Hall Law School where you graduated with an LL.B. in 1970. You were called to the Bar of Ontario in 1972 and were awarded your LL.M. degree from York University in 1979. I presume all of that is correct?

A. That's correct.

Q. You are employed or practice, rather, as a lawyer and a partner in the law firm of Savage, Shnier & Swanick; is that correct?

A. That's correct.

Q. And you've been associated with that firm since 1980?

A. Yes.

Q. Mr. Savage, turning the page, let us just cover the information that's contained under track

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and field involvement. It indicates that from 1979 to '84, you were a member of the Etobicoke Huskies, subsequently Etobicoke Huskies/Striders Track Club where you were involved in various capacities including vice-president in charge of senior and master athletes and race director for meets such as the Brook's 10 kilometer run for women and so on?

A. That's correct.

10

Q. And then in 1985, you were involved in the organization of the athletics portion of the Masters Games held in Toronto, and were you the chief organizer of that event?

A. For the athletics portion, yes.

15

Q. And then from 1984 to 1986, you were a member of the board of directors of the Ontario Track and Field Association?

A. Correct.

20

Q. And then from 1986 to the present, you have been a member of the board of directors of the Canadian Track and Field Association and since 1987 chairman of its doping solutions and education committee?

A. That is correct.

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Q. As I understand it from the evidence given on Monday by Mr. Dupre, there are some members of the board, I believe three, who are at large, and you are

one of the three members at large on the board of the Canadian Track and Field Association?

A. That is correct.

5 Q. All right. You, as we have already heard in the evidence, were involved in the appeal committee or investigation committee that dealt with the suspension of Messrs. Gray, Spiritoso and Dajia; is that correct?

A. That is correct.

10 Q. And as I understand it, you indeed were the chairman of that committee?

A. Yes, I was.

15 Q. Now, just to put it in context, I don't think it's necessary that we go into any particular detail on this, but that committee which involved you as chairman and others who have already been named, did it carry out its own investigation, or did you proceed in the sort of court model with the CTFA presenting its case, as it were, and the three athletes presenting their case?

20 A. Yes, we proceeded in the court model with the parties presenting their cases.

Q. And was evidence taken under oath?

A. No, it was not.

Q. Did witnesses in fact testify, however?

25 A. Yes, witnesses did testify.

5 Q. All right. Now we have already in the record a number of documents related to that committee and some have been added to this record that we have now filed as Exhibit 267. Let me just ask you, first of all, in your recollection, did Messrs. Gray, Spiritoso and Dajia themselves testify at the hearing that was held in December 1986?

A. Yes, they did.

10 THE COMMISSIONER: Well, I think Mr. Gray was there in a dual capacity, wasn't he? He was there as counsel for all three, including himself?

15 THE WITNESS: That is correct. He was

counsel for the three. There was no distinction, though, made between whether he was giving evidence on behalf of himself or he was in the capacity as counsel.

THE COMMISSIONER: Well sometimes lawyers don't make that distinction but they should, you know.

THE WITNESS: That's probably true.

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MR. ARMSTRONG:

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Q. In Gray's case, he was, of course as you have just confirmed with the Commissioner, there in the capacity as counsel and, now presumably from your evidence, in the capacity as witness and also in the capacity as a party. Did he actually at some point take

off his metaphorical gown to go to the place where people were giving witnesses and said "Okay, I'm now a witness; this is what I've got to say," or was it just a free flow through the meeting where it wasn't always clear when he had his witness hat on, his counsel hat on and his legal party hat on?

5 A. Totally free flow.

Q. Do you have a recollection of whether each of the three, that is Gray, Spiritoso and Dajia were asked whether indeed they had taken any banned substances?

10 A. They were each asked whether they had taken steroids, and each of them answered in the negative.

Q. Now I assume you're aware of the fact that Mr. Gray in particular has testified here and said 15 that is not the case?

A. I'm aware of that. I'm also aware of Mr. Dajia's testimony relating to that.

Q. All right.

20 A. I did make some notes on that specific point, and I've gone back and I've checked those notes, and in each case it refers to an answer of "no".

At the time, or a day or two later, I received a memo written by one of the other members of the investigating committee, Mr. Rollie Bulloch, where in his 25 notes he also indicated that they did not or that they had

testified that they did not take steroids.

Q. And, Mr. Savage, I want to move away from the investigative committee itself and from your report. Your report has already been filed, I believe, as Exhibit 141. It has been discussed at length here. Your views are well known as expressed in the report itself, and other witnesses have had an opportunity to express their views at some of the issues that emerge, quite apart from the issue of whether or not the three had in fact tested positively, so I don't intend to dwell on that.

What I want to do now is move ahead to the period of time after the 18 months had run out and Gray, Spiritoso and Dajia were subject to an application for reinstatement. Did you become involved in any way in the application for reinstatement that Gray made on behalf of himself, Dajia and Spiritoso?

A. Yes, I did, in a very intermittent way. I was contacted in, I believe, December or January of 1988 -- I'm sorry, just give me a moment -- '87; December or January of 1987 first by Mr. Buckstein, who at that time was a member of the board of the Ontario Track and Field Association, and subsequently by Mr. Gray. Each one of them indicated to me that they had received communication from Wilf Wedmann saying that their application for reinstatement should take place before the

Ontario Track and Field Association board.

THE COMMISSIONER: I've forgotten now.

What was the penalty at that time?

5 THE WITNESS: The penalty was a lifetime ban with the right to apply for a reinstatement after an 18-month period.

THE COMMISSIONER: 18 months, was it?

THE WITNESS: Yes, and apparently Mr. Gray had forwarded a request to Mr. Wedmann --

10 THE COMMISSIONER: After the 18-month period?

THE WITNESS: After the 18-month period or just before the end of the --

15 THE COMMISSIONER: Or close to its expiry, I think?

THE WITNESS: Yes, asking that they be considered for reinstatement.

THE COMMISSIONER: Right.

20 THE WITNESS: As I understand it, Mr. Wedmann read the rules, and it was his interpretation of the rules that because he interpreted the ban as coming from the OTFA, the OTFA would be the ones that would have to hear the reinstatement.

THE COMMISSIONER: I see.

25 THE WITNESS: He apparently contacted the

OTFA and Mr. Gray about this, and Mr. Buckstein phoned me on behalf of the OTFA, and about two weeks later Mr. Gray phoned me, and both of them said, "Is this correct? Is it supposed to go before the OTFA?"

5 I took the rules out, reviewed them and, in my opinion, OTFA only did an investigation. The suspension or the penalty was applied by the CTFA under the CTFA rules, and I felt it was the CTFA's responsibility to deal with the reinstatement.

10 Not after Mr. Buckstein's call but after Mr. Gray's call, I contacted Wilf Wedmann by telephone and I said, "I think you've got this wrong. I think it goes before the CTFA board," and we talked for a while and he agreed with me, at which point he agreed to put it on the
15 next board meeting of the CTFA or in front of the CTFA board.

MR. ARMSTRONG:

Q. So, in a sense, you were involved in
20 the initiation of the reinstatement process.

Now I'm heading to a meeting that took place on August the 7th at the National Championships in the summer of 1988, but before I do that, let me ask you, were you involved at any other time before the meeting of
25 August 7, 1988, concerning the reinstatement application?

5 A. Yes. I seemed to get involved every time there was a problem. The next problem was just before the April board meeting which was held in Sudbury, and Mr. Gray contacted me and asked me whether he was permitted to appear in person at that hearing or whether he simply had to file some kind of written material. It was my opinion that he was entitled to appear in person, and we had a long discussion about it.

10 I can't recall whether I contacted Mr. Wedmann and asked him about that, my interpretation, or not. I do know I finally said to Mr. Gray, "You can either appear in person, if you choose, or you can send written material."

15 As it was getting close to the date of the hearing, I indicated to him that if he wished to send written material, he could give it to me and I would take it up to Sudbury with me and present it to the board at that time.

20 We also talked about the content of that written material, what should go in --

THE COMMISSIONER: Was this the application of all three?

THE WITNESS: This was the application for all three, yes.

25

THE COMMISSIONER: All three?

THE WITNESS: Yes. I indicated to him that he would have to give us whatever reasons he felt that the group should be reinstated after the 18-month period, but I specifically pointed out to him that I thought it would be wise of him to deal with the concept of why they had told us, each one of them had told us and lied, in effect, that they had not used steroids. Mr. Gray did not attend at the hearing. He sent me materials which I took up to the hearing.

10 Then I was involved with an in-camera session at the board when they made a decision on the reinstatement of the three parties. I came back to Toronto the next day. I phoned Mr. Gray. I informed him of the decision. I informed him of the conditions that were placed on the decision, and then I assumed everything just moved from there until the next involvement.

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MR. ARMSTRONG:

Q. All right. My recollection is that the board of the CTFA approved the reinstatement in accordance with certain conditions, that was to have a test done, pay \$500 for the cost of the test, and presumably on the production of a negative result, they would be subject to reinstatement?

25 A. Yes. There was one other condition,

and that was that they sign an agreement with the CTFA to be part of the out-of-competition testing program for a period of two years from their date of reinstatement.

Q. Then the next problem was that all of
5 this of course, in order to meet the IAAF requirements,
that they had to be reinstated by the IAAF?

A. Yes, that is correct, and the IAAF meeting was coming up the following weekend or the weekend after. When the reinstatement was approved, the decision 10 was made that we would go to the IAAF, ask them to provide a conditional reinstatement, conditional on us providing the negative tests because there was no way we could have had the negative tests back in time for that meeting, so that really the reinstatement would be approved subject to 15 us simply writing to the IAAF saying that we have received the negative tests and now they are fully reinstated.

Subsequently, we learned that that did not happen, that the request was not sent over. When Jean-Guy Ouellette arrived, it was not on the agenda. He spoke --

20 Q. When you say "sent over", you mean sent over to London where the --

A. Yes, sent over to London where the IAAF was meeting.

Q. Yes.

25 A. And I understand that Jean-Guy

Ouellette attempted to have them put it on the agenda, but because of the Zola Budd matter, which took up the entire agenda, it was not dealt with at that time.

Q. All right.

5 A. I did not become aware of this, though, until much later.

Q. All right, and then --

A. Next was approximately end of May, the early part of June, when Rob Gray once again contacted me
10 by telephone and said, "What's going on with our reinstatement? Nothing seems to be happening." At that time, he indicated to me that he had not even received a letter from the CTFA indicating that he had been reinstated and the terms of that reinstatement.

15 In fact, now that I think of it, about two weeks prior to that, I think I received also a phone call from Mr. Dajia's coach asking about the reinstatement, and at that time, I told him about the conditions, and I assumed that everything was on its way and was being taken care of.

20 After Mr. Gray's phone call, I called the CTFA, and I'm not sure whether I spoke to Casey Wade or to Steve Findlay, remembering at that time Mr. Wedmann had resigned from the CTFA, and there was no president in the organization at that time to replace him, and I was told

that at the end of the April board meeting, no staff people had been given instructions to do anything about this.

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5 So, I basically said to which ever one of
the two I was talking to, you know, it doesn't really
matter who did what, do something, and do it now because
these athletes were entitled to have the matter dealt with
expeditiously.

10 That telephone call ended, I believe, I mean
I know I sent a letter but basically saying the same
thing, you know, do something, and do it now. But, I
can't locate the letter.

15 Then the next time the matter came up was in
June at the symposium on doping in Ottawa. Immediately
prior to that meeting --

THE COMMISSIONER: That's June of '88 now.

15 THE WITNESS: In June of 1988. Casey Wade
came to me and said Sport Medicine Council will not allow
us to have the samples tested in Canada. And I really
couldn't understand why. He said, well, they are banned
for life. And I said, but they are paying the cost, there
is no cost to Sport Medicine Council, why can't they be
20 tested in Canada.

 We talked about it for a little while and we
said, well, fine, we are going to be at this meeting in
June we will ask him.

25 We got to the meeting and before talking to
anyone from the Sport Medicine Council, Casey and I had

the opportunity of speaking with Robert Bainton who was
the Calgary lab. And he confirmed that they were not
allowed to test the samples. We talked about the possible
reasons. And he said there must be some ethical reason
5 because there was a desire not to have labs testing
athletes so that they could determine clearance times and
so on.

So, he said, let's go and talk to the font
of knowledge on ethics who was Arnold Beckett. So, the
10 three of us went and we spoke to Arnold Beckett. We
explained what the situation was. And he said that's
perfectly normal, there is no ethical problem. And Mr.
Bainton said, fine, if there is no problem, we will do it,
we are happy to get the business.

15 So, that was fine. We assumed we had solved
the problem. Then Mr. Bainton back and said we can't do
it because Sport Medicine Council will not allow any
athlete that tested positive and is therefore on our
banned-for-life list to be tested at any accredited
20 Canadian lab on the basis that if they test them, then the
lab will get no more business from the Sport Medicine
Council and Sport Canada.

25 So, they weren't -- even though Calgary
wasn't getting any business, as I understand it, at that
time, they were not going to take the risk because they

were hoping to get a portion of the contract in the future.

Over the weekend, Casey and I had several discussions with, I think her name is, Helen Dixon. I know her last name is Dixon, I think her first name is Helen, about it, and she indicated that the position of Sport Canada or Sport Medicine Council, and to be blunt I had a great deal of difficulty distinguishing between the two when we are talking about it, was that these athletes were banned, no federal money was to be spent on these athletes because the Federal Government paid a contract price to the labs they considered that there was a subsidiary as part of that price going to the lab and therefore they required that the labs not do the testing.

That position was subsequently taken with the Ben Johnson samples and the out-of-competition just awhile ago. And I understand that those rules have now been changed. They will now allow a lab to enter into an outside contract.

Anyways as a result of that, Casey and I decided, well, if we are going to get these samples tested, we are going to have to find a lab outside of the country to do the test. And they ultimately were tested at the lab in Indianapolis, the IOC credited lab in Indianapolis.

Q. All right. So, you were involved in all of that at the end of June, 1988. Was your next involvement in this issue at the beginning of August?

A. At the nationals.

5 Q. At the nationals?

A. Yes.

Q. All right.

A. When the issue came up once again at the nationals, Rob Gray had asked for a meeting with 10 himself and Mr. Dajia.

THE COMMISSIONER: At this stage the reinstatement had not been effected yet, I gather?

15 THE WITNESS: The reinstatement had been effected. The reinstatement was effected prior to the nationals and we allowed them to compete in the nationals.

THE COMMISSIONER: I see.

THE WITNESS: The problem at that stage of the game was the government ban and the fact that --

THE COMMISSIONER: On the funding.

20 THE WITNESS: The funding ban. And the fact that we had been informed orally that the funding -- that if we spent any Federal Government money on these athletes we were jeopardizing the funding of the CTFA.

THE COMMISSIONER: All right.

MR. ARMSTRONG:

Q. And the issue, as I understand it that arose there was, particularly in Dajia's case, he came first, and the throws coach on the national team wanted him to go to Italy with the national team?

A. If I recall rightly, it actually came up before he was on the team. Mr. Gray and I met and discussed the matter in the field wandering around at the nationals. And he was anticipating at that point in time when the matter actually came up that Mr. Dajia would qualify for the team.

Q. Yes. In any event, as it turned out, and as we established in the evidence before us, Dajia wanted to go to Italy, he was selected by the coach of the throwing segment to be on the national team, but Sport Canada's position was that because of the lifetime ban, the CTFA's funding, or at least the CTFA took the view, that their funding was in jeopardy if they permitted Dajia to go to Italy and compete. Am I right?

A. That's correct.

Q. So, the whole object, I take it, of this meeting that Gray was trying to organize was to deal with that issue?

A. That is correct.

Q. All right. And a meeting, we know,

was organized sometime during the day of August the 7th outside a media tent or a media trailer at a picnic table?

5 A. Well, prior to that, though, I met with Mr. Gray when I arrived, and I met in the field with Mr. Gray. And Mr. Gray and I discussed the problems that we have just been talking about now, basically the two sets of problems. One, that we the CTFA had legally dropped the ball in terms of the speed of reinstating him. And he was quite right on that, we had.

10 And two, the question of the funding and their ability to participate on a national team with funding or perhaps with their own funding or with discretionary funding. And we spent I would guess a half hour to an hour out in the field having a very amicable discussion about the pros and cons and the independence of the CTFA and whether if the CTFA were to allow Sport Canada to take this position they were backing down on their independence. And then he talked a little bit about the evidence that was given at the, I believe, it was the injunction hearing that had been held earlier with the CTFA through -- Mr. Wilf Wedmann had put in an Affidavit saying they were independent of the government, and if the government could take this position with us, how could we be independent of the government.

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It was actually quite a pleasant and

philosophical discussion of the problems.

THE COMMISSIONER: All right.

THE WITNESS: At the end of that discussion,
Mr. Gray, this is while we were still out in the field,
5 Mr. Gray and I decided where I would go and sit in the
stands while he would attempt to find Mr. Dajia, and I
would attempt to find Mr. Ouellette and Mr. Dupre and we
would meet in a spot in the stands and then get on with
our meeting.

10 He also indicated to me at the time that we,
the CTFA, would have no problem with Mr. Gray, but that
Mr. Dajia was fairly hot-headed and might go to the press.
And I took him to mean about, one, the way we handled the
reinstatement which, you know, was fair enough. They had
15 a fair, fair complaint on that.

20 And two, about the government policy of
non-funding. And quite frankly, I would have been happy
to have him go to the press because I didn't like the
policy myself. And I wasn't sure if maybe the press
wasn't the best way to bring that to a head.

Anyways we left at that point and we
subsequently had a meeting at the picnic table.

Q. All right. Who was there?

A. There was myself, Mr. Gray, Paul Dupre,
25 Jean Guy Ouellette were at the meeting. Subsequently,

Casey Wade came over.

THE COMMISSIONER: And Mr. Dajia?

THE WITNESS: Mr. Dajia was not there.

THE COMMISSIONER: Just Mr. Gray?

5 THE WITNESS: Just Mr. Gray.

MR. ARMSTRONG:

Q. And at no time was Dajia either there or in the vicinity?

10 A. At that point I had only seen Mr. Dajia once in my life, and that was at the hearing. I don't think I would have recognized him if he was in the vicinity. He wasn't at the table, but I mean he could have been in the vicinity and I wouldn't have known who he was. But I don't think he was in the vicinity because I know he was supposed to be at the meeting, and I know Mr. 15 Gray had gone to get him.

Q. All right. Then tell us, please, your best recollection of what was discussed at this meeting?

20 A. What was discussed at the meeting was how Mr. Gray could best go about obtaining relief from this government ban. And we talked about the fact that --

THE COMMISSIONER: How Mr. Dajia could get relieve?

25 THE WITNESS: Mr. Gray and Mr. Dajia. At

that point in time, the two of them wished relief. Mr. Spiritoso apparently had decided that he wasn't interested in participating any further.

5 We talked about or we indicated to Mr. Gray that we felt it was their responsibility to make an application to the Minister for relief from the policy, but we indicated that we were supportive of their application and that we would send a letter in support of their position to the Minister.

10 And as I understand it, that's actually what took place. Mr. Gray applied to the Minister for relief and Mr. Dupre on behalf of the CTFA forwarded a letter to the Minister supporting Mr. Gray's position.

15 Q. All right. Now, Mr. Dajia, as I am sure you know has already testified at this Inquiry and he has said that he was present at this meeting. And I just want to read to you what his recollection is of what was said at the meeting.

20 He first of all said that Gray, you, Dupre, and Ouellette were there. And he then, in response to a request to relate the conversation at this meeting said:

"All that I can remember was Paul Dupre more or less saying what happened in this letter.

He was just telling me how their hands are tied with Sport Canada and they are going to

cut -- Sport Canada is going to cut their funding if they put me on the team, and I was really upset. I also threatened them. I mean, I was sort of very, very upset and I don't remember anything else as far as that.

5 Q. All right. And when you say you also threatened them, what did you say?

A. Something to the effect that, you know, you guys do not realize what I know about track and field, and I could cause a real black cloud around track and field if I go to the press or whoever. I mentioned that I knew about Dr. Astaphan and a few of the people under his care."

10 15 And I will just read the rest of it so that we have it all.

"Q. And did you mention anybody in particular under his care?

A. Not in particular.

20 Q. All right. And did any of these people who were representing the Canadian Track and Field Association say to you well, what is it are you talking about?

A. No.

25 Q. Did you have any sense of whether

they understood what you were talking about?

A. I'm sure they did. It's not the first time that that's happened.

Q. Did you ever use the word steroids or drugs?

A. No, I didn't."

Now, that is Mr. Dajia's sworn evidence first that he was at the meeting, and, secondly, what it was that Mr. Dupre had said to him and then his in effect saying that he made this threat of going to the press and that he could cause a real black cloud around track and field.

You have already told us that Dajia wasn't there. Having read that evidence to you, does it either refresh your recollection as to whether Dajia was there -- well, first of all does it --

A. No, no, I have no recollection of Dajia being there. I was here for Mr. Dajia's evidence and in fact I think the next day or the day after I even phoned Mr. Gray to see if he remembered Mr. Dajia being there because I just do not remember Mr. Dajia being there. He just wasn't there. He was supposed to be.

Q. Did anybody who was at the meeting say anything like that?

A. Not that I can recall.

Q. Then in fairness to everyone concerned in this particular issue I want to the read to you Mr. Gray's sworn testimony.

I am sorry, I should have identified, Mr. 5 Commissioner, that excerpt that I read from in the case of Mr. Dajia is Volume 41, page 7290 to 7291.

THE COMMISSIONER: Thank you.

MR. ARMSTRONG: I am now going to refer to the Gray evidence at Volume 60 beginning at page 10333.

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MR. ARMSTRONG:

Q. Here is Mr. Gray's recollection first of all as to who was there. He said:

"Bruce Savage, Paul Dupre, Jean-Guy 15 Ouellette, myself, Peter [presumably meaning Peter Dajia] and Casey Wade was, who worked for CTFA at that time. I believe he has left recently.

He was sort of hanging on off the side. 20 He was not really involved but he was -- I think he was waiting to be summonsed to be given some instructions or something like that, but he wasn't involved totally.

Q. Mr. Gray, what is your recollection of what was said during the course of the 25

5 discussion?

A. Well, at first when Peter was still there, Mr. Dupre explained to us what had happened and why this letter came about, had come about.

10 He explained to me that there had been a meeting in June, a conference, a doping conference which was I think sponsored by Sport Canada which I think all the leading athletic nationals of the world sent representatives, and he explained to me that the CTFA had been approached by a representative of Sport Canada at that time and he was told, the representative was told that if any of us were reinstated to the national team, they would have the -- Sport Canada would cut the funding to the CTFA, which, of course, was to the tune of probably \$2 million a year.

15 20 That was the -- he explained, and I, of course, was somewhat taken back by that, but he explained that's why this letter had been written, to explain the situation. And he -- at that point I think Peter got very upset about it all, and I remember him

making some comments to the effect that,
'You guys don't know what I know. I can
turn in the world's fastest man' and the
word that sort of sticks in my mind about it
all is he said 'the meal ticket,' something
about a meal ticket, and other than that it
was a fairly long meeting.

Peter left shortly after making these
comments, and I continued to sit there and
try to work things out with Dupre, Mr. Dupre
and Mr. Ouellette about our plans to try to
get us reinstated through the minister, the
sports minister.

Mr. Dupre advised me that he thought he
had a very good chance to be reinstated by
Mr. Charest, and I sent a letter the next
day, as a matter of fact, to Mr. Charest
requesting a reinstatement, and he -- I am
not sure how long the meeting was, but the
part where Peter -- Mr. Dajia was there was
very short. He was not there very long."
That's the evidence of Mr. Gray.

And I simply ask you this, having read the
evidence of Mr. Gray to you, does that refresh your memory
as to whether Mr. Dajia was present at least briefly for

part of this meeting at the picnic table?

A. I thought about it for a long time.

Mr. Dajia was not there.

Q. And I take it also then that Mr. Gray's evidence does not cause you to reflect and recollect that either Dajia or somebody else may have said words such as I have just read?

A. That's correct.

THE COMMISSIONER: The letter you are referring to was a letter explaining that though they would be reinstated, they could compete on the national team but they could not compete internationally. That's the letter you are recovering to?

THE WITNESS: That's correct.

MR. ARMSTRONG: Yes. I am sorry, I should have taken the trouble to identify the exhibit number on the record.

THE COMMISSIONER: I recall the letter.

MR. ARMSTRONG: Thank you.

THE COMMISSIONER: It wasn't explained again.

MR. ARMSTRONG:

Q. After Dajia testified and you called Mr. Gray the next day, was there then at least at that

point in time some doubt in your mind as to whether or not Dajia had been at this meeting? It must have --

5 A. Well, I just couldn't understand -- I mean I didn't recall Mr. Dajia being at the meeting. I mean he wasn't at the meeting. And yet he kept saying he was at the meeting. And somehow or other I was sort of going back and trying to test my own memory to find out, you know, am I right or am I not. It's just one of these things someone keeps saying "I was there." "I was there."

10 "I was there."

THE COMMISSIONER: But if he made these statements that he could turn in the world's fastest man or the meal ticket, you would remember that?

THE WITNESS: I would remember that.

15 THE COMMISSIONER: All right.

MR. ARMSTRONG:

Q. All right. Then, Mr. Savage, I am going to turn to another subject and that is the general
20 question of the policy.

THE COMMISSIONER: We are getting back now to the reinstatement. Following meeting, I think you have told us that Mr. Dupre on behalf of the CTFA wrote supporting the right of Gray and Dajia to compete
25 internationally.

THE WITNESS: That's correct.

5 THE COMMISSIONER: And that was subsequently approved, I gather?

THE WITNESS: No, it's never been approved.

10 THE COMMISSIONER: It was never approved?

THE WITNESS: No. They are not allowed to compete internationally now for Canada.

15 THE COMMISSIONER: I see. So, that nothing was done actually. In other words, the further appeal failed?

THE WITNESS: The appeal to the Minister failed. And their appeal was rejected and they are still banned from appearing for this country internationally.

THE COMMISSIONER: Thank you.

15 MR. ARMSTRONG: There was the correspondence that is referred to --

THE COMMISSIONER: Yes.

MR. ARMSTRONG: -- we filed that --

THE COMMISSIONER: All right. Thank you.

20 MR. ARMSTRONG: -- with you and it is on the record. And the Minister's rejection of Dajia and Gray is on the record. You may recall that at some point during this process, and I can't remember just which exact point Mr. Spiritoso lost interest and --

25 THE COMMISSIONER: And he cancelled the

cheque for \$500?

THE WITNESS: No, that was Mr. Dajia.

THE COMMISSIONER: Dajia, I meant.

MR. ARMSTRONG: That was Dajia?

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THE WITNESS: That was Dajia. Mr. Spiritoso had at some point, I don't remember exactly when, Mr. Gray wrote to us and indicated he was only proceeding on behalf of him and Mr. Dajia. Mr. Spiritoso --

10 THE COMMISSIONER: I remember it was Mr. Dajia who cancelled the cheque for the test?

THE WITNESS: That's correct.

MR. ARMSTRONG: I think are you both wrong, with all due respect, but it doesn't matter because I --

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THE COMMISSIONER: We both can't be wrong.

MR. ARMSTRONG: You are both wrong.

THE COMMISSIONER: One could be wrong.

MR. ARMSTRONG: It was Dajia --

20 THE COMMISSIONER: Who cancelled the cheque.

MR. ARMSTRONG:

Q. It was Dajia that ultimately cancelled the cheque for something like \$10 at the end of the whole process, but Spiritoso faced with having to take a test

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and pay the IOC medical lab \$500 said there is no way I am going to do that, and I think that's when he dropped out. Am I not right?

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A. He dropped out before the test was taken.

Q. Yes.

A. Mr. Spiritoso dropped out. Mr. Dajia provided a cheque for \$500 and then after the test was done cancelled the cheque.

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THE COMMISSIONER: So, you are wrong?

THE WITNESS: Mr. Dajia has now paid the \$500.

THE COMMISSIONER: All right.

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MR. ARMSTRONG:

Q. All right. Then what I would like to do now, Mr. Savage, is turn to the question of your responsibilities as a member of the Board of the Canadian Track and Field Association between 1986 and the present, and in particular, your responsibilities relating to doping control.

First of all, at what date approximately in 1986 did you become a member of the board?

A. In June 1986, at the annual meeting of the Association in Vancouver, which was the same date that

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Jean-Guy Ouellette became a member. It was the first election at which the Board had at-large numbers.

Q. So, he is one of the other of the three at-large members, is he?

A. No, Jean Guy is the Chairman of the Board, but that was when he became Chairman of the Board myself, Leroy Kelly from New Brunswick, and Maureen Switzer were elected as the three at-large members.

Q. Okay. Then just to put your entry to the Board in context, we know from the evidence of Mr. MacWilliam yesterday that a 1986 doping control plan of the CTFA had been adopted at a prior board meeting in February and included a program of both testing at competition and testing out of competition?

A. Yes.

Q. Is that correct?

A. Yes. He testified to that, I believe.

Q. Yes, okay. And then you were a member of the Board then in September of 1986 where the out-of-competition part of the program was referred back to committee in order to get feedback from the coaches, athletes, and the various branches, am I right?

A. Yes, I was a member of the Board at that time.

Q. And can you tell us what the rationale

was at that time for the Board when it had already adopted the program back in February to then in September send the thing back to committee in order to get further feedback from athletes, coaches, and the branches?

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A. I think you have to understand the make up of the Canadian Track and Field association.

The Canadian Track and Field Association is a very large volunteer organization with a very small professional staff. Track and field athletes by their nature are very independent, their sport is independent, they compete on behalf of themselves. There is a great deal of politics within the operation of the Canadian Track and Field Association. And it is generally considered not only prudent, but the best way to get things through with maintaining the harmony of the organization, to send proposals out to the branches of the members and ask them for their input before you put a policy into place or a proposal into place.

And so that's pretty well standard on everything that is done there. Very little is imposed from above. Normally a policy or a program will be developed, it will be sent around for comments and input, before it is actually carried out.

Q. Although we have already heard from Mr. Dupre that at the present time and I assume at that time

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that each region of the country was indeed represented on the Board of Directors?

A. That is correct.

5 Q. Those people presumably from time to time not only speak in regard to national issues at large, presumably they speak from time to time about the views of their membership locally?

A. That's correct.

10 Q. Was there then in September 1986 not sufficient support for a program of out-of-competition testing that it still had to go back to the grass roots membership?

15 A. Well, I mean I don't know what the grass root support for an out-of-competition testing program would be. I had only come on the Board and that was my first board meeting. I do know that there is a significant difference between saying I support short-notice out-of-competition testing and supporting a specific program or proposal that's put forward on it.

20 I mean there is more to it. It is very easy to say I support a out-of-competition testing program. It is more difficult and it is I think more important to understand what it is you are supporting.

25 I know myself that I certainly would not have supported a proposal without having a procedure and

knowing the implications of it and having that in place in the beginning.

5 I think that the proposal is very easy to do, the words are very easy. Carrying it out is a different thing. And it takes time and it takes input from various people to understand what the problems are.

10 Q. Did you know when you went on the Board in June and then attended your first Board meeting in September of 1986 that, at least according to Mr. MacWilliam, that the CTFA was on record since 1982 of supporting out-of-competition testing?

15 A. No. I knew very little about -- when I went on the Board of the CTFA I knew nothing about banned substances, or procedures, or any of it. I mean that's just not the milieu I came from. I was with the Etobicoke Huskies which is basically, in those days when I was with them, was a middle distance track club, and basically I was with the club because I ran. And I ran with a bunch of old guys my age, and the only other people that we could keep up with the club who were the girls about 15 to 20 17, and we would have our workouts together.

Q. You are boasting.

25 A. Well, by time they were 17 and 18 they left us behind, but that was the milieu that I came from and my involvement with track and field up to that point

in time.

5 Q. In any event then the view of the Board
in September of 1986 was that if we are going to enter in
to the implementation of out-of-competition testing, we
have got to put the proposal out to the membership and get
some feedback?

A. That's correct.

10 Q. Do you know, indeed, how much feedback
actually did result from the request having been made?

A. I don't know.

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Q. Do you remember that although you may not recall the precise numbers that it was pretty minuscule?

A. I would expect it was pretty minuscule, but I really don't know.

5 Q. Do you know what the feedback was? I mean --

A. No, I really don't. At that point in time I really had no involvement in September. My first real involvement with the banned substance list and doping was the investigation in December of '86. That was my baptism by fire in the area of banned substances.

10 Q. All right. But at subsequent board meetings, were you informed of what the result was of the matter being referred back to committee and back to the branches and the athletes?

15 A. I don't recall, and I don't recall seeing it in the minutes.

Q. All right. Then you apparently were part of the delegation of the Canadian Track and Field Association that attended the World Symposium on Doping in Florence, Italy, in the spring of 1987; is that correct?

A. That's correct.

Q. All right.

25 THE COMMISSIONER: When did you become

5 chairman of the doping committee?

THE WITNESS: That would have been a little bit later in '87 when the committee was actually formed.

THE COMMISSIONER: I see.

10 THE WITNESS: I believe it would have been in the August meeting the committee was put together.

THE COMMISSIONER: It was following the trip to Florence, though, not before?

15 THE WITNESS: Yes, it was following the trip to Florence. You see, because of my involvement in the investigation and because of the report that I had done for the CTFA and the recommendations in it, I just seemed to naturally flow into the area of doping control.

15 THE COMMISSIONER: I see.

20 MR. ARMSTRONG:

Q. And at tab 4 of the book of documents, your report from the Florence meeting and the reports of the other two representatives of the Canadian Track and Field Association are there. Looking at your report, which is the third page in on tab 4, you outline a proposal that was made by Canada which reads:

25 "1. That the IAAF approve in principle the concept of year-round (training and competition) random testing of athletes of

IAAF members by IAAF accredited testers."

I take it that was one of the major initiatives that your group took at this symposium?

A. That's correct. It was primarily spearheaded by Doug Clement. At the meeting, I was really a neophyte. Dr. Clement knew a great many people, had a better idea of how to gain support and how to make things happen, although I was privileged to actually make the motion.

Q. And further on in this group of documents in tab 4, I see --

THE COMMISSIONER: I think that proposal was amended, though, before approved, was it?

THE WITNESS: Yes, that's correct.

THE COMMISSIONER: It replaced the "IAAF" with "all sport organization bodies"?

THE WITNESS: Yes.

THE COMMISSIONER: Thank you.

MR. ARMSTRONG:

Q. And Mr. Wade in his report, that is further along in this group of documents, he makes the same point that you do on the first page of his report:

"Perhaps the most significant outcome reached during the symposium was in the form of a

unanimous recommendation to the IAAF to develop a policy of 'off-season' random testing. This recommendation was initiated by Canada as it became clear that this was the single most effective method for combating drug use in sport."

Now, by the time Wade and Dr. Clement and you attended in Florence in May, had you yet been apprised of any feedback from your own organization, the Canadian Track and Field Association, as to its membership's view of the implementation of out-of-competition testing?

A. No.

Q. Then I want to move you to tab 5, and there is an excerpt of a draft of the minutes of the board meeting June 12 to 14, 1987, in Ottawa, and at the page numbered 7, it's the third page of these three pages, under the heading "Doping Policy Revision Update", the minute indicates:

"The Board discussed what the next steps would be relative to the doping policy revision. Mr. Savage suggested he work with a small group of individuals to develop an actual proposal as opposed to the skeletal outline he presented to the meeting which would be dealt with by the Board and would

then result in the establishment of a full Doping Committee."

So this, I take it, is the genesis of the doping solutions and education committee, is it?

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A. That is correct.

Q. And this I take it is the commencement of your detailed work as chairman of this committee in the actual development of a specific proposal for out-of-competition testing, isn't it?

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A. Technically, I didn't become chairman of the committee until we finally had a committee approved, which I believe was after the August meeting, but basically I said "Let me run with this; let me put a procedure together and then we'll get the committee together to deal with the procedure, to deal with the specifics."

Q. Now Mr. MacWilliam testified yesterday, the former technical director and subsequently a consultant who had worked on this from -- I don't want to misstate it -- I think he said 1980 -- I think his work began in 1981, although it may have even begun earlier, but certainly through the early 80s, through '86, he said by the fall of 1986, the board had adopted the concept of out-of-competition testing and that the procedures and the proposal was worked out; is that not the case?

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A. I am -- certainly they had adopted the concept of out-of-competition testing. I am unaware of details of the procedure that he was proposing or that you are referring to.

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Q. All right.

A. There was a standard Sports Medicine Council procedure that was in place, but that was basically for the collection of samples, which had been in place for a significant period of time.

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Q. All right. In the chronology of the development of your work in this area, tab 6, we see again draft minutes of the board meeting in Ottawa, 3rd to 6th of August, 1987, and under the heading "Doping Solution" is a reference to a discussion that took place at the board again about this issue.

I don't propose, Mr. Commissioner, to either have Mr. Savage read through this or to read it through myself, except it would appear, and I ask you to agree with me or disagree, Mr. Savage, that again what's happening here is the board is entering into a debate about the whole subject of doping control; is that not fair?

A. The board is entering into a debate about the whole subject of doping control and ends up basically setting up the committee and authorizing myself

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and --

THE COMMISSIONER: Who is Mr. Langley?

5 THE WITNESS: Mr. Langley at that time was the representative from the Atlantic region. He's now the vice-president.

THE COMMISSIONER: But he was expressing a view that unless the whole world got on board -- isn't that right? I'm just reading it now.

THE WITNESS: Yes, that is correct.

10 THE COMMISSIONER: -- that Canada should not implement a random testing policy unless it was universally applied?

15 THE WITNESS: That's certainly what he said, but I think, though, that we have to come to the end and what was done by the board.

THE COMMISSIONER: No, no, that was the debate. Mr. Armstrong asked you about the debate. I think that was one of the debates.

20 THE WITNESS: There certainly was a debate, and there has been a great deal of concern, and I think in the end, though, the position is --

THE COMMISSIONER: Well, you were very much opposed to his position, I notice in the next paragraph?

25 THE WITNESS: Yes, but I think in the end, the board's position was if we expect other people to do

it, we have to do it ourselves.

THE COMMISSIONER: I understand.

MR. ARMSTRONG:

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Q. Mr. Savage, just picking up the thread
of what the Commissioner was saying, at the page marked
page 17, the 4th line, Mr. Langley is minuted as saying:

"Within our international body [that's the
IAAF I would assume] we have a group who say
one thing publicly and privately do
something else. There is another group that
is somewhat stricter and may or may not
enforce those rules. We have a group of
athletes who we ask to compete
internationally under a certain set of rules
about which we're not entirely sure with
respect to implementation."

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Mr. Langley, I take it, was just expressing a view that
many people in the track and field community at that time
had that the IAAF was not serious about doping control; is
that not right?

A. I guess to answer that question, you
would have to ask Mr. Langley.

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THE COMMISSIONER: Well, within our
international body, that's the IAAF he's talking about

there?

THE WITNESS: Yes.

THE COMMISSIONER: "...we have a group who say one thing publicly and privately do something else."

5 THE WITNESS: It's very difficult for me to interpret what -- I mean his words are there, but it's very difficult for me to interpret what the background to those words is. There is certainly, and I believe that Jean-Guy Ouellette reported it at one board meeting, where 10 there were rumors flying around and there were certainly things in newspapers about athletes going into washrooms and finding clean samples there, and different things like that, which wouldn't necessarily be the IAAF that was doing it. It might be meet directors. It could be, you 15 know, who knows who.

This is a most difficult problem, and a lot of things come up in different contexts. Certainly, you know, what is set out there was an approved set of minutes, so that's what Mr. Langley has agreed that he 20 said.

MR. ARMSTRONG:

Q. There seems to be an attached group of documents that again I won't review in detail, but I take 25 it these are all procedural documents that were prepared

for discussion at the board meeting, is that it, or for discussion by your committee?

5 A. For discussion at the board meeting and subsequently to form the basis for the procedures that we were going to propose be adopted by the CTFA for out-of-competition testing and for in-competition testing.

10 Q. What was the source of these documents, in particular, for example, sample collection facilities and recruitment of volunteers, athlete selection at competition, athlete selection other than competition, and so on?

15 A. Basically, what I had learned between or at the Gray-Dajia hearing, in Florence and in discussions with people primarily in Florence about testing and how one goes about it.

THE COMMISSIONER: I see a document here, "Notification of the Athlete". What type of notice was this going to be? It's following -- I'm at tab 6, "Notification of the Athlete".

20 "1. An athlete selected for non-competition testing will be notified of selection for testing by way of registered or hand-delivered notification."

Do you have that?

25 THE WITNESS: Yes.

THE COMMISSIONER: Was there a time frame
within that?

5 THE WITNESS: Yes. The concept was -- I think first you have to realize that our program is based on doping control officers who are volunteers.

THE COMMISSIONER: Yes.

10 THE WITNESS: Who are not staff. The second thing is that at Florence, the indication seemed to be that 48 hours, that certain substances, certain banned substances could be cleared from the system in 48 hours.

15 The position was taken that 1) from a fairness point of view, we had to give the athlete some kind of notice, but the notice period had to be short enough that it was meaningful in terms of catching banned substances, steroids in particular, and as the number of 48 hours came up, out of Florence, that was the number that was chosen.

THE COMMISSIONER: I see.

20 THE WITNESS: In fact, experience has shown us in terms of the notification that the procedure we put together and ultimately approved here in terms of sending written notices to athletes just doesn't work. We now phone the athletes and have them pick up their notice from the doping control officer. It's a very difficult program 25 to administer, tracking athletes down.

THE COMMISSIONER: I understand that.
We've heard something about that.

5 THE WITNESS: Yeah, and so -- and this is what I was trying to get at earlier. Sometimes it's very easy to put words down on a page and they make a lot of sense when you put them down on a page, but when you come to carry them out, it becomes a lot more difficult, and often what seems eminently sensible on paper, just doesn't work out in practice.

10

THE COMMISSIONER: All right. Mr. Armstrong, I'm sorry.

15

MR. ARMSTRONG:

Q. Thank you, Mr. Commissioner. I'm going to, for the next several questions, follow through the chronology that appears at the front of Exhibit 267, and Mr. Savage, at page 4, there is a notation of September 17, 1987:

20

"CTFA draft out-of-competition testing procedure discussed with representatives of Sport Canada, Sport Medicine Council of Canada and other national sport governing bodies in meeting called by Sport Canada regarding doping matters in general."

25

What was the result of that meeting, so far as your

recollection is concerned?

5 A. There was really no result, I would call it, of that meeting. The meeting was called by Sport Canada, and Mr. Ole Sorenson in particular, and a group of people involved in various sports in the in-competition and out-of-competition testing programs sat around a table and talked about some of the problems they had, some of the successes and failures and where we were doing. It was really a very good opportunity to exchange ideas and I guess exchange ideas on the way we solved various problems, but I don't think there was anything you could say came down as a result of that meeting.

10 Q. All right. Then in the chronology, you note that the first meeting of the committee that's just been established, the banned substances committee that was established in Ottawa in August, meets on October 17th and 18th; correct?

15 A. That's correct.

20 Q. And I take it that's just your first sort of organizational meeting on this?

25 A. No, it was a working meeting. Unfortunately, with the funding situation as it is, you don't have time for organizational meetings. The meetings have to do something, and this meeting dealt with the policy, and I believe at one of the tabs there is a set of

minutes. I believe the next tab, tab 7, there are the minutes from that meeting. Basically at the meeting we discussed the problem in general, and we discussed the procedure specifically, and certain suggestions were made
5 for changes to the procedure, most of which were made.

Q. All right. If one looks at the minutes at tab 7 of this meeting on October 17, 18 in Toronto, at page 3 under the heading "Athletes Selection Other Than at Competition", in the minutes at the bottom of the page
10 there is a reference:

"Ray Lazdins again stated that he does not agree with non-competition testing especially if other countries are not doing it. He feels that it imposes on the athletes' rights."

15 Then he goes on to say:

"Ray also reiterated that if a full doping solution program is not in place, we should not continue to implement the policing side
20 of the program."

Now Lazdins, of course, was then and still is a thrower, is he?

A. That's correct.

Q. Did you find through the course of your
25 work on the doping solutions committee, and I'm not here

zeroing in on any athlete in particular and not Mr. Lazdins, but did you find in the membership at the athletes' level and at the coaches' level that there was some opposition to the implementation of
5 out-of-competition testing?

A. Yes. There was some opposition for two reasons. One is what's happening in the rest of the world, and the second reason was I think you have to look at the atmosphere, the general atmosphere in society
10 around that time. Fortunately, for instance, in our own profession and this question of testing, the Canadian Bar Association, Ontario Division, did a report on mandatory drug testing. I mean, you've got to realize the athletes read these things in the newspaper.

15 THE COMMISSIONER: I think they're talking about in the workplace.

THE WITNESS: Yes, I realize that they're talking about in the workplace, but the answers that are given -- I mean in this report, for instance, it says:

20 "In conclusion, it is the view of the CBAO
that mandatory drug testing is neither
acceptable nor justifiable in this country.
As one commentator recently observed,
certainly drug testing works, and if we
25 accept that, why not stop embezzling by

mandatory scrutiny of everyone's bank records; why not stop child pornography by mandatory searches of everyone's house; why not stop shoplifting by requiring strip searches at all cash registers?

The practice of random and compulsory drug testing of employees is increasing in Canada. Unless our governments act quickly to curb this practice and to implement programs that deal more effectively with the matter of substance abuse in the workplace, the tensions and problems associated with this issue will continue to escalate."

I'm very sympathetic in that light to the athletes' position that we've got these rights, and you're now coming along and telling us that "You're going to have to pee in a bottle whenever we tell you to." I don't want this Commission to think that those are athletes who are on banned substances who are trying to hide. Most of those athletes are perfectly clean, competing athletes.

THE COMMISSIONER: I understand.

THE WITNESS: But they do see the fact that everywhere around them everyone is talking about the right not to be tested, but we're saying to them, "You don't have that right. You've got to come along and you've got

to participate in this program."

I subsequently, in fact, met with the athletes' group to review the program we put together, and we went through it and they made some suggestions for changes, and they went along with it, and it was always our goal -- I mean we were in a position where we could have brought it in and imposed it upon them -- it was always our goal to go into the program with them, with them in agreement that the process and procedures we had put together --

THE COMMISSIONER: Well, you couldn't do it without the agreement of the athletes, in advance, to agree to this plan --

THE WITNESS: Well, that's correct, except we had --

THE COMMISSIONER: -- as a condition of eligibility?

THE WITNESS: Yes, that's correct.

THE COMMISSIONER: But in other words, you now have the support of the athletes by and large?

THE WITNESS: Yes, we have the support of the athletes by and large.

THE COMMISSIONER: Perhaps this would be a good time to take our luncheon break.

MR. ARMSTRONG: Thank you.

THE COMMISSIONER: 2:30, please. Thank you.

--- A luncheon break was taken.

5 --- Upon resuming.

THE COMMISSIONER: Mr. Armstrong.

MR. ARMSTRONG:

10 Q. Yes, thank you, Mr. Commissioner.

Could I just take you back for a brief moment, Mr. Savage, to the meeting that you attended as part of the Canadian delegation to Florence. Dr. Clement and Mr. Casey Wade were the other two representatives?

15 A. Dr. Clement was there. I believe he was a representative of the Sports Medicine Council. I'm not sure quite what his status was, and he gave the report on behalf of Canada at the meeting. Casey Wade was there on behalf of the CTFA as was Denis Landry.

20 Q. All right. I just want to read to you a quotation that is attributed to Dr. Clement when he was in attendance at that meeting in Florence. It's recorded in an article in the New York Times of November 17th, 1988, in which Dr. Catlin, first of all, is quoted, and it says:

5 "Dr. Catlin is also quoted as saying that he
 attended a 1987 meeting of sports physicians
 in Florence in which 'a Canadian guy gets up
 and says that the IAAF must get rid of the
 fixing of test results.' In a recent
 telephone interview, Dr. Doug Clement, who
 was affiliated with the Canadian Olympic
 Association [perhaps they meant the Canadian
 Olympic Association, but I suspect they may
 have meant the Canadian Track and Field
 Association], identified himself as the
 Canadian guy and confirmed Dr. Catlin's
 recollection."

10

15 Do you have any recollection that Dr. Clement made such an
 observation that the IAAF must get rid of the fixing of
 test results?

A. No, I don't recall that statement,
 although as I said, Dr. Clement did make a presentation
 which was about 10 or 15 minutes long. It's possible.

20

Q. All right. Then going back to where we
 were before the luncheon recess, in tab 7 of Exhibit 267,
 there is included among the documents the notes of the
 October '87 or the minutes of the October '87 meeting of
 the doping solutions committee, and at page 6 of those
 notes, at the bottom of the page, is a reference:

25

"The Committee agreed to propose to the CTFA Board of Directors to commence non-competition testing on April 1, 1988."

Was such a proposal eventually made to the CTFA board of
5 directors to --

THE COMMISSIONER: I'm sorry. Where's that, Mr. Armstrong?

MR. ARMSTRONG: Tab 7, sir, and I was looking at the minutes. It's page 6, at the bottom of the
10 page, item 9(b). There are a number of documents.

THE COMMISSIONER: I have it, thank you.

MR. ARMSTRONG: Non-competition testing; is that it?

15 MR. ARMSTRONG:

Q. Yes. And did you indeed propose to the CTFA board of directors and did the CTFA board of directors accept that non-competition testing would commence on April 1, 1988?

20 A. That is correct. That was the start date, and on the next page you'll see the committee set out the original program that was visualized.

Q. All right.

THE COMMISSIONER: Well, it starts here in
25 January '89, though?

THE WITNESS: That's just putting the months in order. It actually starts in April '88.

THE COMMISSIONER: Oh, yes, thank you.

Three for April '88; three for May; three for June; three
5 for July; three for August and three for September, right?

THE WITNESS: That's correct.

THE COMMISSIONER: Go ahead.

MR. ARMSTRONG:

10 Q. What does that work out to?

Approximately 50?

THE COMMISSIONER: In '88?

MR. ARMSTRONG: Well, for the whole fiscal year.

15 MR. BOURQUE: 54.

MR. ARMSTRONG: We'll take Mr. Bourque's, if you'll take it. 54?

THE WITNESS: Yeah, 54.

20 MR. ARMSTRONG:

Q. All right. Then in the chronology or summary in the front of Exhibit 267, there is a note on November 13th of a meeting between your committee and athletes' representatives for further revision of 25 out-of-competition testing procedure, and is the record of

that meeting --

A. There's --

THE COMMISSIONER: I just want to follow
the chronology. This is October '87. There is a
5 recommendation that some random test meets commence the
following April; am I right so far? Is that right?

THE WITNESS: Yes, that's correct.

THE COMMISSIONER: And that was approved
when?

10 THE WITNESS: That would have been approved
with the program in December.

THE COMMISSIONER: In December, thank you.

15 THE WITNESS: And the second meeting that
Mr. Armstrong is referring to was actually a meeting
between myself, Steve Findlay and the athletes' committee
which took place at the Cambridge Hotel in Toronto. There
are fall meetings, general coaching meetings and athletes'
meetings held in Toronto, and Mr. Findlay arranged to have
me attend and meet with the athletes so we could go over
20 the program and get their input on it.

MR. ARMSTRONG:

Q. All right. And what in general terms
was the reaction of the athletes at that meeting?

25 A. Well, the reaction of the athletes was

first off that they felt that there was some civil rights involved, and there were situations here that perhaps they were not prepared to accept in theory in terms of their rights.

5 On the other side of the coin, they accepted the fact that this program was going to come in and was going to be not only used in track and field but, we expected, in other areas, and that it was in their best interests and everybody's best interests to accomplish the development of a program that was as fair and equitable as could be done. Therefore, they participated quite willingly in going over the various portions of the program and making suggestions.

10 THE COMMISSIONER: What date is that meeting, Mr. Armstrong? I've lost you. What date are you on?

MR. ARMSTRONG: This is the meeting with the athletes, and it's simply referred to in the summary of Mr. Savage's evidence.

20 THE COMMISSIONER: I know. What date, please?

MR. ARMSTRONG: November the 13th, but I don't think we have a minute of it in the documents, do we?

25 THE WITNESS: No. I believe if you go --

THE COMMISSIONER: I don't see it here, though, either. Do you have it here? It's not in the summary.

5 MR. ARMSTRONG: Page 4 of the summary, at the beginning.

THE COMMISSIONER: Oh, I see. Thank you.

MR. ARMSTRONG: Down at the bottom of the page, November 13.

10 THE COMMISSIONER: I'm sorry. I have it now.

THE WITNESS: No, there are no minutes of that meeting that I'm aware of.

MR. ARMSTRONG:

15 Q. All right. Then, Mr. Savage, I'm going to take you to the top of page 5 of the summary where there is a note December 17th, 1987, "Banned Substances Committee out-of-competition testing procedure approved by the CTFA Board of Directors", and there is a reference to tab 9. I take it that in all of the documentation that we find attached to tab 9, we find set out the details of the proposed out-of-competition testing procedure?

A. That's correct.

Q. All right.

25 A. And along with the budget, the doping

control budget documents also.

Q. All right. Let me first of all ask you this. What was the proposed budget, so far as the out-of-competition testing portion of the program was
5 concerned?

A. I'm sorry, just give me a moment. I'll have to -- the out-of-competition, the actual testing portion of the budget at that time was \$24,340.

Q. Where do we find that now? I'm sorry.

10 A. The sixth page from the end of that material.

Q. I see, yes. \$24,340, and then the outline of the tests from April of 1988 to March of '89 is on the following page showing a total number of tests of
15 54. Now --

THE COMMISSIONER: I'm sorry. I see a dope testing workshop, 5,200. Where is the -- is that included in the item? Dope testing workshop, 5,200. We're all supposing that doping in sport -- no, that's in Florence. What was the cost for the doping control? That would be
20 in-competition as well as out-of-competition testing?

THE WITNESS: Well, there are a number of pages in there up in the upper right-hand corner entitled "Project Title", and this one is out-of-competition
25 testing.

THE COMMISSIONER: All right.

14 THE WITNESS: And as I say, it is six pages
back from tab 10 back into tab 9.

THE COMMISSIONER: All right.

5

MR. ARMSTRONG: Okay. Now --

15 THE COMMISSIONER: Yes, I see that, thank
you.

MR. ARMSTRONG:

10

Q. Now, what was the general scheme of the
out-of-competition testing? We have heard here, you know,
of various schemes of announced, unannounced two-weeks
notice, no notice, specific athletes being targeted.

15

The other schemes we have heard about are
non-targeted, completely random. Can you briefly in a
thumbnail way give us what the basic elements --

16 THE COMMISSIONER: Can I just go back for a
moment?

MR. ARMSTRONG: Yes.

20

THE COMMISSIONER: That doesn't include the
cost of the lab, does it?

17 THE WITNESS: No, it does not. The lab
costs are all picked up by the Sport Medicine Council.

25

THE COMMISSIONER: You want all this to be
picked up by Sports Canada? You want the administrative

costs as part of your budget, right?

THE WITNESS: Yes, but the budget that we submit for our program, it is for the cost of operating the program, but does not include the lab cost on any testing.

5

THE COMMISSIONER: I understand. Thank you.

10

THE WITNESS: To answer your question, Mr. Armstrong, the concept of the out-of-competition testing program is first off to establish a pool of athletes who will be subject to testing.

15

The pool of athletes was, we decided, would be athletes who were members of a national team, whether that be a junior team, a senior team, an espoir team, regardless. And we also defined any carded athlete as a member of a national team by definition.

20

So, we had this pool of athletes, which I assume we will get into, it would be filled as athletes were named members of the national team. Each athlete when they were named a member of a national team was required to sign a contract. It is, what we in the legal profession would call a contract of adhesions - you sign it or you don't get on the team, that's your choice.

25

Once they sign the contract, they are assigned a number and they go into a pool and a random

drawn -- is done monthly. In fact, I think what ultimately was done sometimes it was done twice a month to determine which athletes were going to be tested.

Simply, the numbers were put in the pool.

5 If there were three tests for the month, three numbers are drawn out. Those numbers are then cross-referenced against the numbers athlete's numbers and names to determine who the athletes are. Then we go into the process of notifying the athletes and obtaining the tests.

10

MR. ARMSTRONG:

Q. All right. Just directing your attention first to a pool, what was the potential size of the pool? We have heard, for example, about 90 carded athletes thereabouts --

15 A. 200 to 250 would be my guess of the potential of pools. It depends on what teams were sent out in any year.

Q. Yes.

20 A. Also the contract provided that the athlete had to be a member of the pool while they were a member of the national team. And you have got to realize in track and field you don't become a member of the national team per se. You become a member of a national team for an event and you may be named two weeks before

25

that event to the national team.

So, what the provision in the contract was
that you would be subject to the testing while you were a
member of a national team and for 12 months after you last
5 were a member of a national team.

So, it is you are not getting the people
before they become members of the team, but once they are
a member of a team, they are in it for a 12-month period
or longer if they continue to make national teams and you
10 roll it over.

Q. I see. Was there any provision in the
procedure for targeting an athlete?

A. Yes, there was. Back in the original
procedure, proposed procedure, there was a provision
15 whereby one individual in this case -- I will just go back
to it, it is at tab 6. And in the athlete's selection
other than competition, there was provision for the
Chairman of the Doping Solutions Committee to have the
right to select any athlete by name for testing under the
program provided that no individual athlete can be
20 selected for testing under this provision more than twice
in any calendar year.

When I took that proposal to the Doping
Solutions Committee, their feeling was that the Chairman
25 should have some control on that power and it should be a

committee of three people, two out of three to call for a test.

When I met with the athletes, their position was, look, you have created a very fair random system here and then all of a sudden you throw a clinker in where one person can abuse it, and we don't think that is right, and we think that should come out.

So, that was pulled out of the program before it was approved. So, that was suggested. It was discussed, we received feedback on it, and we pulled it out. As a matter of fact, we put it back in at our last annual meeting because the incidents have shown that this is really the cheapest way of doing an investigation.

THE COMMISSIONER: Is the target system, too.

THE WITNESS: The target system, yes.

MR. ARMSTRONG:

Q. So, in other words, if you ever find yourself in the situation again that appeared to have existed from time to time in the last ten years, that is consistent rumors or a number of rumors circulating about particular individuals, the Chairman or the committee of three could say, "All right, we are going to target X or Y or Z, we have heard enough rumors and made enough

observations about them ourselves, and we are going to test that person."

A. That's right.

Q. All right. Then moving along in the
5 chronology in January of 1988, particularly January the 28, you record a meeting between the Canadian Track and Field Association, Sport Medicine Council of Canada, and Sport Canada a meeting at which you and Mr. Wade attend on behalf of the CTFA, Ms. Booth attends on behalf of the
10 Sport Medicine Council, and Mr. Sorensen attends on behalf of Sport Canada. What was that meeting about and what was the result of it?

A. That's an interesting meeting because I didn't even recall the meeting until Marilyn Booth
15 indicated, through her counsel, that that meeting had taken place. And I checked back in my book and sure enough I had been in Ottawa that weekend so obviously it took place.

I really don't remember the contents of that
20 meeting. I suspect Marilyn Booth and Ole Sorensen would be able to fill you in on it. I just -- it is one that escapes me, but it definitely took place.

Q. All right.

THE COMMISSIONER: That's either a
25 reflection on everybody else or yourself, I guess.

THE WITNESS: I don't know where, but once again I went back to my diary and I checked and I was in Ottawa on that day.

5

MR. ARMSTRONG:

Q. All right. Then on May the 16th, 1988, there is a written request to Sport Canada for budget approval for the out-of-competition testing. And that request is contained at tab 10.

10

And your out-of-competition testing budget is, according to the third document into tab 10, has dropped from whatever the number was, 24,000 to 15,000?

15

A. The out-of-competition was dropped from \$2,400.00 or sorry to \$2,400.00 from \$2,700.00, plus some of the other factors were changed in there. I think --

THE COMMISSIONER: Well, the grand total was now 15,000; I think it was 24,000 before.

20

THE WITNESS: Yes. And it is now down to \$15,160.

THE COMMISSIONER: Of course the major expense is the testing, isn't it?

THE WITNESS: Yes, the major testing is the testing. This budget was changed because --

25

THE COMMISSIONER: A reduced number of tests?

THE WITNESS: There were four tests reduced because we were now into May and we hadn't done any tests.

5 Also the Sport Medicine Council of Canada had undertaken to do certification of doping control officers which to us was a very important factor. By them running the courses for certification of doping control officers, we were -- there was a larger pool of people available to do the testing. So, you will see we have cut 10 down the travel, the meals, and the accommodation from 54 to 26 because there are just more people spread across the country who can do the job in terms of collecting the samples.

15 So, that is another area where it was cut down.

MR. ARMSTRONG:

Q. Now, what happened to the target date of April the 1st which you had targeted back in your committee on October and then at the December board meeting you had -- the Board had accepted that April the 1st 1988 was the time --

20 A. Well, I guess there are a number of reasons this program didn't start on April the 1st. And perhaps this would be appropriate time to go into them.

The first reason was the design of the program. The design of the program was to take athletes as they made the national team and put them into the pool. As it turns out, one, there were no national team events from January until April. So, there was no national team to get anybody into the pool from.

The first national team -- first event that athletes were named to the national team that I am aware of was the World Junior Championships where athletes were being named in about June.

So, the design of the program was such that athletes came into the program as they made national teams. And so, you really didn't have a pool until you had your first national team.

Q. Was that appreciated when you established the target date back in October?

A. The concept was appreciated, but the fact that there were no national team events December through March I don't think was appreciated. I mean it was the indoor season.

THE COMMISSIONER: Well, you have the national team from the year before and the according to the rules that carries on for a year. So, you had the nucleus of the national team for the year before.

THE WITNESS: Except the athletes went into

the pool by signing a contract when they became a member of the national team.

THE COMMISSIONER: I see.

5 THE WITNESS: These athletes had been national team members.

THE COMMISSIONER: Weren't given a contract to sign then?

THE WITNESS: That is correct. So, as they became members in 1988 --

10 THE COMMISSIONER: Right.

THE WITNESS: -- they were given the contract to sign. So, we didn't have anyone in the pool to test at that time.

15 MR. ARMSTRONG:

Q. Let me just interrupt you there. My recollection is that you would have had at least 90 athletes who would have signed agreements in respect of their carding status?

20 A. That is correct.

Q. By far and a way the majority of the athletes who had signed those cards would have, in the fall of 1987, agreed to out-of-competition testing.

We know there are certain well-known exceptions now of Issajenko, Steen, and maybe one or two

others, but I don't think for example Ben Johnson was one, I may be wrong on that, but in any event you had a pool of 90 athletes carded by the Canadian Track and Field Association who were defined in your program as part of

5 the national team?

A. That's absolutely correct. And --

Q. Why couldn't you go with it, go with
the 90?

A. At the annual meeting, which was held
10 in June of 1988 in Ottawa, we considered that possibility. When I say we, I say I am talking about myself, Steve Findlay, and Casey Wade. And we sat down and we said we want to get this program going, we really wanted to get it off the ground and get some tests taken.

15 And you have got to realize there are many parts of the program other than just testing. We are talking about testing. Other parts of the program were off and going.

I mean materials had been prepared for
20 distribution to athletes, athletes had been told about the program and so on. But on this particular point, we sat down and we said let's, you know, one of our options is to force this thing, to simply say, you guys are carded athletes, you are all coming in to the system right now and we are going to start testing you. And --

Q. Let me just stop you there. You wouldn't be forcing it because all of these 90 with say no more than three or four exceptions had signed --

5 THE COMMISSIONER: We are assuming they all had signed contracts. They are supposed to, they are required to under the Sports Canada Directive.

MR. ARMSTRONG: Yes.

THE COMMISSIONER: We know some did, but we haven't seen them all, I think, Mr. Armstrong.

10 MR. ARMSTRONG: My assumption, I suspect it's a fair assumption, that if they were taking the money they would have signed the agreement. Otherwise, why is the CTFA sending out the cheques or Sport Canada sending out the cheques?

15 THE COMMISSIONER: Well, I think that is a fair assumption. It may not be completely -- we haven't seen all the contracts. We are assuming that's so. We know a few exceptions --

MR. ARMSTRONG: Yes.

20 THE WITNESS: Certainly, Mr. Armstrong, I made your assumption when we sat down at the meeting that we had a potential pool of carded athletes whom, in my position, was we could force into the program earlier than them actually being named to a national team.

25 And we had a long discussion, the three of

us. And once again the feeling was that we wanted -- we had put this program together, we had put a process and procedures together that the athletes had indicated they were happy with, we wanted the athletes to be happy with what we were doing. We wanted the athletes' co-operation on this thing, and, therefore, we should let the pool fill up in the normal way as the athletes made a national team.

5

MR. ARMSTRONG:

10

Q. This discussion was taking place in June of 1988?

A. In June of 1988.

Q. In fairness, would that be at the end of June 1988 when you were at the --

15

A. Second or third --

Q. -- doping conference in Ottawa?

20

A. No, it was at the annual meeting of the CTFA. And I am not sure whether that was before or after the doping conference. I think it is usually the second week of June, something like that.

Q. If you are still talking about implementing a program in which the pool would fill up in the ordinary way --

A. That's right.

25

Q. -- there wasn't a proverbial snowball's

chance that you were ever going to get out-of-competition testing going before the Olympics?

A. But you have to realize, Mr. Armstrong, that the out-of-competition testing program was not designed to be -- have anything to do with the Olympics. The out-of-competition testing program, and this is something that I have great deal of difficulty with, people are trying to equate the program that we established with stopping the Ben Johnson incident.

10 And bluntly, it wouldn't work. It is not going to happen that way. The program wasn't designed that way. The program was designed as a long-term program to discourage the use of banned substances by athletes, not to guarantee that Ben Johnson or anyone else doesn't get caught at the Olympics.

15 I mean there are programs for that. There are other countries who use those programs. We have looked at those programs. We have decided that our job is to create a program that will discourage the use of banned substances. And everything is aimed towards that.

20 Now, therefore, I mean we weren't -- I mean it would nice to have the program, I was very anxious to have the program up before Seoul, but Seoul wasn't our goal. Our goal was to get this program up and operating, to start to iron the bugs out, to start to find the

problems that we had where it wasn't right. To make those changes and then it was an evolutionary process.

I mean that's why we started off as you see in the numbers at three tests a month. We didn't know what problems we were going to have when we drew an athlete's number out of the pool. I mean we knew that the athlete we drew may be in Toronto living next door to a doping control officer, but he may be in Newfoundland living 300 miles away from the nearest doping control officer. He may be in the United States at a school. Who knows.

We wanted to get something up and get it going and begin to see what the problems we had were and then start to refine it as we go along. But it wasn't aimed towards the 1988 Seoul Olympics.

Q. Okay. Well, of course, you don't know about all of those problems, and I suspect the implementation of the program in itself involves a learning experience for everybody?

A. That's correct. I mean we talk -- we talk about resources and there is a tendency for resources to come across as money. I mean just throwing money at the problem isn't going to solve it because the resources that we require to run a good program go far beyond money. They involve training people. They involve, you know,

taking bugs out of programs. They involve facilities. They involve lots of things that aren't just dollars and cents cash.

Q. Well, I hear what you say and
5 understand it, but let me ask you this: Really when you get right down to it, isn't it just a question of asking the athlete, presuming you have him available at York University or wherever, to provide a sample and sending the bottle in the appropriate container to Montreal and
10 asking Dr. Dugal to test it?

A. Absolutely not.

Q. I mean --

A. Absolutely that's --

Q. That's what it comes down to
15 simplistic --

A. That is certainly simplistic. And it is obvious that you have never actually had to go and collect a bottle of pee. I mean, I have, and it is not that simple.

20 It is relatively simple if you get an athlete in a location that's near your collector. That's relatively simple. But you don't always get your athletes that close to your collector. I mean we draw athletes who are all over the place. We have a budget that allows us
25 to spend an honoraria for collecting a sample of \$50. We

have a lot of our collectors, all of our collectors, by the way, are volunteers. I mean none of these people get paid more than their honoraria of \$50.

5 A lot of them are medical doctors. It is very difficult for me to call up a medical doctor up and say here is \$50, get in your car and drive to North Bay and collect a sample from Mr. X.

10 That is why our program is based around the athlete coming to the collector. And that's one of major reasons for the 48 hours is if I had a staff it would be easy to do, it would be a lot easier if we have professional collectors. We could draw five names out, here, Joe, here are the five names you have to collect, go find them, but it doesn't work that way in our system.

15 Q. Well, you either find them or you don't find, it is as easy as that. Either Mark McKoy was around ready to pee in a bottle or he wasn't. If he is there, you ask him to pee in a bottle and send the bottle to Montreal to be tested, or he is not available?

20 A. I am sorry, but how -- what kind of effort are you going to find put in to find Mark McKoy. We put a great deal of effort in it. We have a young lady in our office who now spends most of her time phoning around trying to find athlete's locations, phoning around trying to find doping control officers who are capable or

prepared to do the test and putting them together.

It sounds easy, I appreciate that. It sounded easy when I wrote the procedure, but when we started doing it, it wasn't nearly as easy.

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THE COMMISSIONER: So far in the chronology, we haven't done it yet. So, can we get on with it, Mr. Armstrong.

MR. ARMSTRONG: Yes.

10

THE COMMISSIONER: Let's do it and we will see --

MR. ARMSTRONG: I suspect that that's exactly what we should be doing, and I apologize for dwelling on it.

15

MR. ARMSTRONG:

Q. Then just let me ask you one procedural point. Did the plan at that time and does the plan now provide for a notice period?

20

A. The plan provides for up to a 48-hour notice period and it did at that time.

Q. All right. Then I notice that in the chronology of May - June 1988 there is verbal assurance from Sport Canada that a reasonable amount would be allocated for the 1988-89 year.

25

And then in July of 1988, the Sports

Medicine Council of Canada advised the CTFA that the out-of-competition program was objectionable on the grounds that it provided for the athlete's B sample to be tested at an IOC accredited laboratory of the athlete's choice.

5

And further that the contractual terms incorporating the athlete's consent to out-of-competition testing will have to be reviewed by their legal counsel.

I assume that the B sample issue is the B sample issue that we have already heard much about here, and you indeed wrote about that in the Gray, Spiritoso, Dajia reasons for decision?

A. Yes, that's correct, it is the issue of the second lab for the B sample.

Q. All right. How does the plan operate now? Can an athlete who has a positive result on the A sample demand that the B sample be tested at another lab?

A. No.

Q. All right. And is that something that the CTFA is still fighting for, as it were? Obviously you felt strongly about it?

A. Yes. And I think as an organization we feel strongly about it. I suspect that any major changes like that, though, will be influenced a great deal by the decision of the Commissioner here. And I don't think you

25

are going to find changes like that made until such time as the report comes down.

Q. Now, was the rejection of the B sample being tested at a second lab, did that come from the Sports Medicine Council of Canada and Sport Canada? They simply said, Sport Canada said we are not going to fund the B sample to be tested at another laboratory?

THE COMMISSIONER: Well, let me I understand, though, it was to be at an IOC accredited laboratory?

THE WITNESS: Yes, an IOC accredited laboratory.

THE COMMISSIONER: Other than the one that did the A sample?

THE WITNESS: Yes. You would be giving the athlete a choice of other accredited labs for the B sample, other IOC accredited labs.

As far as I am aware, that information was conveyed directly to Casey Wade and not myself, but it came from the Sport Medicine Council as far as I am aware. That's what he told me.

MR. ARMSTRONG:

Q. And is it straight economics or is there some other issue?

A. No, I think there are several issues. I believe that their position would be -- there are a couple of positions that I was made aware. One was the security of the sample moving it from lab A to lab B, and
5 the cost of moving it, which I had some difficulty with personally because it can't be that expensive to move around a small bottle of urine.

And the second thing concerned the question of the calibration of the equipment that did the testing.
10 And there was -- it was conveyed to me that there was a concern that two labs may not test the substances the same, produce the same results because of calibration.

And that particular issue we took up at the World Junior Championships in Sudbury with Arnold Beckett
15 who happened to be there on the Doping Control Committee and asked him whether that was, in fact, the problem. And his position was no, if one IOC lab picks it up, they should all be able to pick it up, but the calibration, because they work on a profile rather than on a quantum basis, the calibration should make no difference, the profile should be calibrated in the same way.
20

Q. All right. Then moving along in August of 1988, you filed your formal anti-doping plan with Sport Canada seeking an allocation of \$39,000.00. That would be
25 for your entire anti-doping program including both

in-competition and out-of-competition?

A. Yes.

Q. Correct?

A. Yes, that's correct. This once again
5 was a modification to the original program that we filed
way back at the early tab, tab 9, I believe it was.

Q. Yes.

A. And it has got a few modifications to
it. Just one moment.

10 THE COMMISSIONER: What date are we at now,
Mr. Armstrong?

MR. ARMSTRONG: Sorry. We are at the
summary at the top of page 7, August 9, 1988.

THE COMMISSIONER: Thank you.

15 THE WITNESS: Tab. --

THE COMMISSIONER: Tab 12.

THE WITNESS: Yes, tab 12. From the
original, the out-of-competition testing portion is now
down to \$12,520.00. The number of tests is still the
same, but we have dropped again the travel and the meals
20 and the accommodation because with the continuing effort
of the Sport Medicine Council to run their crew chief
programs, the group of crew chief is growing, and it is
giving us more choice of where to find these people.

MR. ARMSTRONG:

Q. All right. Now, Mr. Savage if you count in 6 pages, I think, you come to a document headed Part II, Attachment No. 1, 1988-89 CTFA Doping Control Program?

A. Yes, that's correct.

Q. And this sets out the program for the fiscal year just finished at the end of March 1989?

A. That's correct.

Q. And the total number of tests that was included in this doping control program was 358 tests, 48 of which would be out of competition as I read this?

A. Yes, that's correct.

THE COMMISSIONER: Projected tests; that is projected tests, is it?

MR. ARMSTRONG: Projected tests.

MR. ARMSTRONG:

Q. So, 310 of the tests would have been done at the various domestic meets that are listed, and then the various international meets that are listed, correct?

A. Yes, that's correct.

Q. All right. Has there been any change in the thinking of the organization since this program was

enunciated as to whether or not the number of
out-of-competition tests should be increased relative to
the number of tests done at competition?

5 A. Certainly the percentage between
out-of-competition and in-competition will change, but
that will be because of growth in the out-of-competition
probably more than reduction in the in-competition
testing.

10 The area of major growth has to be
out-of-competition and at the last conference in Monte
Carlo in June, most of the countries that were reporting,
particularly the Scandinavian countries, were indicating
that their procedures were to leave the competition
testing fairly static. But they are really starting to
15 put the emphasis on out-of-competition testing, which is
where we want to go, but I don't think we will cut back on
the in-competition.

Q. All right.

A. We will just leave it fairly static.

20 Q. The out-of-competition testing that you
do, I assume is it done for anabolic steroids only?

A. No.

Q. Or is it done for other --

25 A. Our recommendation is that will be done
only for anabolic steroids and masking agents, but as it

now stands it is done for all substances.

Q. Do you have any indication whether that increases the price? I mean if you are looking for amphetamines, for example, is it any more expensive to add them in to the testing procedure?

A. I really don't have any involvement in the cost of testing.

Q. All right.

A. I understand what the program is, but I am not involved in that at all.

Q. Recognizing that I think virtually all of the other drugs that will be taken for performance enhancement will be taken at the time of competition, why in a out-of-competition testing program do you include those other drugs?

A. I don't think there is any good reason to include them in an out-of-competition. And that's been our position.

The CTFA's position has been that you should only be testing for steroids and masking agents in an out-of-competition testing situation because you create a real dilemma for the athlete, particularly if you pull out the list of banned substances and start looking at it.

I mean some poor athlete goes to his dentist in the morning, has a tooth fixed, is given some kind of

sedative, and we test him in the afternoon, he is probably going to be positive. And It certainly wasn't done for the purpose of performance enhancement.

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A. At the same time, most of these substances, the non-anabolic steroid substances, if they have a performance-enhancing feature, it's only on race day or very close to race day. Taking them in training would be of little or no benefit to the athlete.

5 Therefore, it doesn't make any sense to test for them in an out-of-competition situation, but that's not on a dollar and cent basis; that's on the basis of what you want your program to accomplish and why you are banning 10 the substances.

Q. Well, why are the others included, then, in the --

A. We don't have any choice. There is a contract between the Sport Medicine Council and the lab, 15 and they decide what they will test for. We don't decide that.

Q. All right.

THE COMMISSIONER: This is Dr. Dugal's lab that does all this work?

20 THE WITNESS: That's correct.

MR. ARMSTRONG:

Q. Then there is a record of a meeting in October of 1988 with Abby Hoffman, Ole Sorenson, Paul Dupre, Bruce Savage and Casey Wade, and you have affixed 25

5 the agenda to that meeting at tab 13. Could you take a moment and just tell us what of significance came out of that meeting? The agenda speaks for itself as to what the topics were, but was there anything of particular significance that we ought to know of that came out of that meeting?

A. That's at tab 14 in my book.

Q. Oh, sorry.

10 THE COMMISSIONER: Mr. Armstrong, I guess it's tab 13 in mine, "Anti-Doping Solutions Committee Meeting, 12 October, 1988"; is that the one?

MR. ARMSTRONG: That's the one, yes.

15 THE COMMISSIONER: Well, who was present there? You said something about Abby Hoffman, did you not?

MR. ARMSTRONG: Yes --

THE COMMISSIONER: Was she present?

MR. ARMSTRONG: -- according to the chronology.

20 THE WITNESS: Yes. That was immediately held right after the Olympics and after the Ben Johnson incident. Abby Hoffman and Ole Sorenson were there, myself, Casey Wade and Paul Dupre. We spent a significant period of time sort of discussing what happened in Seoul. Then Abby Hoffman left and Ole Sorenson and the other

three of us went on to discuss the out-of-competition program, getting it going immediately, and increasing the number of tests that we were projecting immediately.

5 We also talked about the B sample, and we were told at the time -- you know, the B sample in the second lab -- and we were told that it was not satisfactory, that they were not prepared to send it to a second lab, although Mr. Sorenson indicated that he had some sympathy for the position and would take it up again with the appropriate people.

10 As far as for testing for substances in out-of-competition other than anabolic steroids and masking agents, he indicated that the current position was that they would test for everything, that they would not be limiting tests to anabolic steroids and masking agents.

15 Q. All right then, Mr. Savage, there are some references in the chronology to further budget requests, and so on, that I'm not going to take the time to ask you any questions about those, but if others wish to do so, they may. A significant date, though, is November 1988, CTFA out-of-competition testing program first implemented, and do I take it from what you've said, that the out-of-competition testing program that was implemented in November of 1988 has those characteristics that you described earlier --

A. That's correct.

Q. -- in reference to the program that was mapped out in October of 1987?

A. That is correct.

5

THE COMMISSIONER: Well, what do you mean by "implemented" on that day?

MR. ARMSTRONG: We're going to look at this now, Mr. Commissioner. I apologize for interrupting. If you turn to tab 19, perhaps with the use of that, Mr. Savage can tell us --

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THE COMMISSIONER: 19?

MR. ARMSTRONG: -- what took place. Do you have that, sir?

THE COMMISSIONER: I have something here.

15

19. Yes. Okay.

THE WITNESS: I think first off, though, we have to be careful when we say "implemented". That's when the first tests were actually done. Prior to that date, there was work on the out-of-competition tests.

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THE COMMISSIONER: So the first out-of-competition testing by the CTFA was in November 1988; is that right?

THE WITNESS: The first test was collected on the 26th of November, 1988.

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THE COMMISSIONER: So that would be the

first out-of-competition testing by the CTFA, would be November of '88?

THE WITNESS: That's correct.

5 MR. ARMSTRONG:

Q. And that's the first implementation.
There was no implementation prior to that?

A. Well, if you consider that the program is once again only collecting samples, that was the first 10 implementation.

THE COMMISSIONER: Well I guess at this time they must have had the code, drawn the names, had the contracts signed; is that right?

15 THE WITNESS: Right, and we had also prepared athletes' material, put together packages of material for athletes on the out-of-competition testing program and on drugs, which had been distributed when they signed their contracts. We had put the contracts together and got them signed. It wasn't -- that is the first day a sample was collected, clearly, but prior to that date 20 there were other steps that were part of the program that were being taken.

THE COMMISSIONER: Well, so far as the athletes were concerned, the first time that anyone was 25 requested to comply would be the 26th of November, right?

THE WITNESS: 26th of November, 1988.

THE COMMISSIONER: Thank you.

MR. ARMSTRONG:

5 Q. And so in November '88, then, there
were four tests done, and --

THE COMMISSIONER: All in Canada?

10 THE WITNESS: All the tests that were done
were in Canada because we don't have the funding to leave
the country.

THE COMMISSIONER: All right.

THE WITNESS: Although we have managed to
get one test, as I believe you're aware, done out of the
country.

15 THE COMMISSIONER: Right.

MR. ARMSTRONG:

Q. All right. You might just tell us
about the Julie Rocheleau case. In brief terms, was that
done as a result of cooperation between the CTFA and the
20 athletics governing body in Switzerland?

A. No, it was done between the CTFA and
not the track and field federation in Switzerland, but the
general sport governing body in Switzerland.

25 Ms. Rocheleau's name came up in the

out-of-competition draw. We were aware that she was out of the country in Switzerland and had been for some period of time, and we made a decision to do whatever we could do to make arrangements with the Swiss to have a sample collected. It took a significant period of time, but Mr. Wade through persistence was able to do it, and a sample was collected in Switzerland.

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THE COMMISSIONER: Well, I see her name here in the schedule. Was that May the 2nd, '89? Was she tested there, or have I got the wrong line?

10

THE WITNESS: Yes, May the 2nd, '89.

THE COMMISSIONER: Was that the test that eventually proved positive or was that --

15

THE WITNESS: Yes, that I believe is the collection date.

THE COMMISSIONER: Right. I meant the collection date, yes.

MR. ARMSTRONG:

20

Q. In May of 1989, in particular May the 10th, 1989, you mentioned earlier about a sample having been taken from Ben Johnson?

A. That is correct.

25

THE COMMISSIONER: Well, this is the 10th of May?

MR. ARMSTRONG: Yes.

THE COMMISSIONER: It says zero. What's that mean?

5 THE WITNESS: I don't think we had any results back by that time. The young lady that prepared this chart used zeros where we didn't have the results back yet. We had simply collected the sample.

MR. ARMSTRONG:

10 Q. I take it, from what you said earlier, that you went through the same difficulty with the Canadian labs or with the lab in Montreal over the testing of Johnson's sample because he was a suspended athlete?

A. That is correct.

15 Q. Did you have his urine tested somewhere?

A. Yes, it was tested by Dr. Catlin in California.

Q. And what were the results?

20 A. It was negative.

Q. All right. Then Angella Issajenko was apparently tested in June. Where was her sample tested?

A. Her sample was tested in California also.

25 Q. Again for the same reason?

5 A. No, an entirely different reason. At the time Mrs. Issajenko was selected for testing, both myself and Mr. Dupre and Mr. Wade were at the doping conference in Florence. There was some difficulty between the staff and --

Q. Not in Florence, in Monte Carlo?

10 A. Sorry, in Monte Carlo. There was some difficulty between the staff and Mrs. Issajenko concerning giving the sample. In the end, Mrs. Issajenko agreed to provide the sample on the understanding that it wouldn't be tested in Canada. One of our staff members agreed to that. Therefore, while I personally wouldn't have made the same decision, we had an obligation to support our staff, and so we made arrangements to have that sample 15 tested in California also.

Q. All right, and what were the results?

A. Negative.

20 Q. All right. Then looking at page 3 of this document, the total number of tests conducted since this was started are November '88, four; December none; January '89, five; February six; March none; April eighteen; May eight; June two. I take it that since June, you've been in the outdoor competitive season, so you're not doing out-of-competition testing, or are you?

25 A. We should be doing out-of-competition

testing, but we've had some major difficulties in a couple of the competition events, and really the person that has been in charge of it since Casey Wade left has not been able to do two at the same time, so they've just been cleaning out the out-of-competition -- or sorry, the in-competition. I believe that's all of the tests that have been carried out today.

Q. Apart from the fact that Ms. Rocheleau was in Switzerland and the reference that you make to Mrs. Issajenko and the difficulty over getting Johnson's sample tested in Canada, have there been any particular problems of all these --

A. Oh, there are a significant number of problems.

Q. What are they?

A. The first problem is we have a great many athletes who are out of the country, and when they come up in the draw, the question is how do we collect a sample from them within the budgetary limits that we have?

At Monte Carlo, I spent a bit of time with the chairman of the doping committee for TAC, The Athletic Congress in the U.S., and they will be starting their program I expect in October and hopefully we can make arrangements with them to have our athletes already in the United States, their samples collected through the TAC

system. The only problem is going to be what cost is down there because their system is significantly different from ours. They are using commercial collection stations, and it looks to me from their budgeting that it's going to cost them --

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THE COMMISSIONER: They are using IOC accredited labs, though, aren't they?

10

THE WITNESS: Yeah, but our samples will still be -- even if we collect a sample in the U.S., it will still be tested in a Canadian lab.

THE COMMISSIONER: Oh, yes.

THE WITNESS: The question is collection, and what they have made arrangements with is, as I understand it --

15

THE COMMISSIONER: Well, how does TAC do the collecting? I'm sorry, I didn't hear that.

20

THE WITNESS: What I understand they have done is they entered into a contract with a commercial organization that has what we would call up here "bleeding stations" across the United States.

THE COMMISSIONER: They have privatized it?

THE WITNESS: Privatized, and they require the athlete to attend at this station to provide a sample, and I would hope that will be able to --

25

THE COMMISSIONER: Take advantage of their

system?

THE WITNESS: -- patch in to that system.

The only thing is, we'll have to patch in at whatever cost they have negotiated.

5

THE COMMISSIONER: Yes.

THE WITNESS: I've had discussions with --

THE COMMISSIONER: Per collection.

THE WITNESS: For collection and then the sample will come back here for testing.

10

THE COMMISSIONER: Right.

THE WITNESS: I've had discussions with people in the United Kingdom talking about similar things. They are collecting from our athletes that are over there and ourselves collecting from their athletes that are here. It's one of the things that has to be done in the long term on a protocol, more systematize basis. I mean, all countries that have out-of-competition testing should be able to access each other's collection facilities to make the program stronger.

15

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MR. ARMSTRONG:

Q. Now, you mentioned the TAC scheme. It was of course scheduled to start in August of 1989 and it hasn't. Is there some new scheduled date for the Americans to start out-of-competition testing?

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THE COMMISSIONER: You say the TAC system has not yet started in the States?

MR. ARMSTRONG: No.

THE WITNESS: No. A letter I got from --

5

THE COMMISSIONER: So there is no out-of-competition testing in the United States yet?

MR. ARMSTRONG: No, certainly not in athletics or track and field.

10

THE COMMISSIONER: Well, I'm talking about the TAC jurisdiction.

THE WITNESS: No. And I received a letter from the chairman of their anti-doping committee, and he indicated a start of October.

15

THE COMMISSIONER: What's been their delay?

THE WITNESS: I don't know.

20

THE COMMISSIONER: Have they been at these conferences that you're at?

THE WITNESS: Oh, yes.

25

THE COMMISSIONER: And have they had reservations about out-of-competition testing expressed at those meetings?

THE WITNESS: Yeah. Their historical problem seems to have been their Constitution and some of the court cases they've had or they've told me about in the United States concerning testing and selected groups.

5 Apparently the NCAA at least has had a couple of court cases involving athletes where the Court has said that they cannot just lump athletes into a pool. If they want to random test the university, they have to random test everybody, not just the scholarship athletes. Now that's what I was told.

THE COMMISSIONER: I see.

10 THE WITNESS: So they've had a great deal of concern, and I know they've had several lawyers working on the case on the situation of testing. I mean, how do we go about it within -- or how do they go about it within the requirements of their Constitution and their amendments?

15 MR. ARMSTRONG:

Q. I take it that so far the issue of athletes' rights and the right to demand a sample from the athlete has really not been a significant issue here? I mean you mentioned it in the discussions, but I mean in the implementation of the program, it surely hasn't been a problem?

20 A. No. I mean, we've -- as I said at the beginning, I think we've got full cooperation from our athletes. I mean, they are cooperating. There are no problems with them at all. I mean perhaps one day it will

happen, but it hasn't happened up until now.

Q. Finally, Mr. Savage, I wanted to take you back to the book, and there is a document at tab 14 of Exhibit 267, and this is a briefing report to the board prepared by Mr. Casey Wade, the competitions manager, which as I understand it sets out the circumstances of the doping control that was utilized at the 1988 National Championships in Ottawa directed in particular at the issue of why Ben Johnson, in August of 1988, was not tested at the completion of the 100 meters?

A. That's correct.

Q. And again this is a document that we can all read, but can you, in brief terms, tell us what was the procedure that was in place in August of 1988 at the National Championships for the selection of athletes for doping control?

A. The procedure then is the same as it is today. If I can go back to the start of the program, the program is designed to create a disincentive for the use of substances; therefore, we feel that what is in the best interests of the program is to create a risk in a larger group of athletes of being tested. Therefore, we designed the program on the concept that for an event that is to be tested, if there is to be one test conducted in that event, then the first three positions will be placed in a

hat prior to the event and a number will be drawn. It will be either 1, 2 or 3 and that number will be the position that is tested. If there are to be two tests done in that event, then disks 4, 5 and 6 will be put into
5 the hat along with what was left of 1, 2 and 3, and the second disk will be drawn, and that will be the second event tested. If there is to be a third event --

Q. The second position?

A. The second position tested. And if
10 there is a third test to be done, then we would throw 7 and 8 in, which would get you all the finalists in the event. The concept is to spread the risk over the entire event rather than have the risk known at the outset.

Q. Well, I suppose the risk is known at
15 the outset as to the position. It is not necessarily known who's going to be in that position at the end of the race?

A. Yeah, that's correct.

THE COMMISSIONER: I'm sorry. As I
20 understand it, one out of the first three will be definitely tested; is that right?

THE WITNESS: One out of the first three is definitely tested, but the athletes don't know which one.

THE COMMISSIONER: No, they know one of the
25 first three is going to be tested?

THE WITNESS: That is correct.

THE COMMISSIONER: What they draw will determine whether it's first, second or third?

THE WITNESS: That is correct. Also, every event is not tested, and we similarly -- well, the procedure provides for a draw to determine how the events or which event will be tested. Once again, when you get down to the reality of a track meet and the fact, for instance, in the Nationals on the Saturday, I think there were 15 finals in a two-and-a-half hour period, and they were not evenly balanced between jumping, throwing and running. What you put down on paper looks good, but when it comes to applying it, it just doesn't work out. I mean you've got to gerrymander the numbers, in effect, to get as many tests as possible in and to cover your bases.

THE COMMISSIONER: And the same procedure I think was followed this year?

THE WITNESS: Exactly the same procedure.

MR. ARMSTRONG:

Q. Now your responsibility as chairman of the doping solutions committee commenced in August of 1987?

A. As chairman, it commenced probably at the first doping solutions committee meeting which would

have been in, I believe, September of 1987; but in reality, in terms of my board responsibilities, they really commenced after the Florence meeting in May. At the next board meeting, which would have been June, I
5 really was given the go-ahead to start to put things together and make it happen.

Q. And so from the time the board gave you the go-ahead to make it start to happen, you're talking roughly 17 months from that time until the time that the
10 first sample was taken in an out-of-competition situation?

A. Until the first sample was taken, but until a program with specific procedures was put in place and available for use, it was approximately nine months.

Q. All right.

15 A. We put that procedure together very quickly.

Q. All right. Bearing in mind that this organization, the Canadian Track and Field Association, was committed at least on paper to out-of-competition testing since 1982, is there any reason why if there had been a will in 1982 that it couldn't have been implemented
20 in 1983-1984?

A. I mean I guess the question comes down to what constitutes a "will" and how you establish your priorities between various activities that are on your
25

plate.

I cannot comment on the mind of the Canadian Track and Field board prior to my involvement with the board. I mean, I just don't know anything about it. But I do know that once again -- I think I mentioned it before -- the Track and Field Association has many jobs to do. This is one of the jobs, but it has many jobs to do, and it has many volunteers who are out there doing those jobs. This subject, this matter, takes priority based upon the people that are doing it, taking care of it. It's priority will be established by the strength that the people running the program can bring to the board in support of their program. It takes its priority from what the public, I would suggest, perceives should be and is being done out there. I mean, we --

Let's look at the year, the Olympic year of 1988. There were a lot of things going on in that year. I mean, it wasn't just the CTFA's out-of-competition testing program. Canada had two major events in the country; the doping conference; they had the Calgary Olympics; we had teams to send to Seoul. We had many, many things going on, and this was one of the priorities. That didn't just happen in 1988. That happens every year, and people establish their priorities on many bases, and I would suggest that because a program such as this was not

number 1 priority isn't because people weren't serious; it was because they set their priorities on the basis of what's going on around them and what they perceive has to be done at any given time.

5

Q. Well, let me put this suggestion to you. Didn't the Canadian Track and Field Association really get serious about this whole problem after the Ben Johnson incident?

10

A. Oh, no. No, far from it. I don't even know where you would get that idea from. From 1987, at least from the time I got involved, we moved that program along very quickly, but I had advantages over the people before me. 1) I was a lawyer, which gave me a certain amount of credibility, particularly in drafting documents and putting things together; 2) I was on the board and suddenly the program had somebody on the board to shepherd it through, which it hadn't had before. If you've ever been involved in charitable organizations or any other organizations, you will be aware that having support on the board is a very important factor in moving your programs forward and getting them implemented. I think we moved very, very quickly in this area, and we have put a program together that --

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20

25

Q. Once you had the support on the board, you moved quickly?

5 A. Once we had the impetus coming directly from the board, we moved very quickly. Remember also, we were very conscious of athletes' rights and wanting to have the athletes a part of the program, not on the outside looking in, but a part of it and in support of the program, and I think we moved very quickly once we got things together.

10 Q. Do you think if there had been perhaps less talk and more action it would have come a lot earlier?

15 A. I'll tell you. The emphasis that's placed on out-of-competition testing and in-competition testing and banned substance lists has certainly increased since the high profile Ben Johnson event. Perhaps, not for Canada, but perhaps in the area of doping control, it's what was required in order to move us from somewhere down here to up here. I mean, we're in the world's eye now, doping control. I think we could accomplish things today if we do it properly that we could never have 20 accomplished before.

 MR. ARMSTRONG: Thank you.

 THE COMMISSIONER: Thank you. Mr. Bourque?

--- EXAMINATION BY MR. BOURQUE:

Q. Thank you, Mr. Commissioner. Mr. Savage, where else in the world at the present time to your knowledge are there out-of-competition testing programs in track and field?

5

A. The Scandinavian countries have had it for a considerable period of time. The United Kingdom has an out-of-competition program going now.

THE COMMISSIONER: This is a fairly recent date, isn't it?

10

THE WITNESS: Fairly recent and on a slightly different emphasis from our program. They have a -- while we take the athlete after they have made a national team, they require an athlete to register 12 months before they are eligible to be on a national team.

15

THE COMMISSIONER: Well, we've got all that material. I should have digested it more carefully before today.

THE WITNESS: They, I believe -- it's quite recent.

20

THE COMMISSIONER: It's a little different too?

THE WITNESS: Yeah.

THE COMMISSIONER: I'm sorry, Mr. Bourque.

25

THE WITNESS: And I don't believe there are any other countries that have out-of-competition testing

programs actually functioning.

MR. BOURQUE:

Q. We have heard evidence that the IAAF
5 consists of 182 nation members. Is that your information?

A. I thought it was 181.

Q. And your information is that Canada,
the United Kingdom and some Scandinavian countries have
this program in effect at the present time out of those
10 182 nations?

A. That's correct, those are the only
countries I know that have it in effect.

Q. Now Mr. Armstrong had asked you what
were the reasons for not implementing the
15 out-of-competition testing program on April 1st, 1988, and
you had mentioned as one of reasons the design of the
program, the necessity to fill the pool. Then the two of
you got off topic discussing the possibilities of getting
a sample from Mr. McKoy, I believe. I'd like to take you
20 back to that topic now and ask you what were the other
reasons, besides the design of the program, that it wasn't
implemented on April 1, 1988?

A. Okay. There were basically four
reasons why it wasn't implemented, and one may not even be
25 a reason. One was the design of the program. Two was the

5 training of the doping control officers. It was considered very important to have trained doping control officers to collect these samples, and we did not want to start the program until a course had either been run by ourselves or by some other body to train doping control officers, and our original budget for instance, that we submitted, had money in it for a course to train doping control officers. The Sport Medicine Council took that program over and did it. So, it was getting the doping
10 control officers up.

15 Three was the difficulties, albeit they weren't major, but the difficulties with the B sample and the contract from the Sport Medicine Council, and four was the question of budget. We were anxious to have firm commitment to funding before we undertook the program. In spite of that, I must say, we did undertake certain parts of the program before that budget funding was in place, such as the putting together of materials for --

20 THE COMMISSIONER: Well, couldn't you have used your overall funds and give priority to this rather than using it for other purposes? You could have used money allocated to you by Sport Canada for this purpose and cut down something else?

25 THE WITNESS: Well, I don't think we could have used -- we would have had to use discretionary

5

funding, and I believe on a cash-flow basis, we did use discretionary funding because the first indication we had of funding of this program from Sport Canada came in January 1989, I believe it was, with a line item in a computer printout budget that said \$20,000 for anti-doping, by which time we had already spent 23 or \$24,000 of our discretionary funding cash-flowing the program up to that point in time.

10

15

But I mean these are all factors. None of them is the major problem, and I would really like to stress, this program wasn't designed for the Seoul Olympics and Ben Johnson, or anything like that, and if anybody sort of thinks that this would have stopped the Ben Johnson incident, I think that they are mistaken. I don't think it would have. It certainly would have been a long shot if it had. So those were the four reasons.

20

25

MR. BOURQUE:

Q. Thank you. Now, you had mentioned at one point --

5 THE COMMISSIONER: Well, the only way, I think it is clear now, that the only way that you are going to have a reasonably good opportunity of determining whether an athlete is on anabolic steroids is by out-of-competition testing?

THE WITNESS: That --

10 THE COMMISSIONER: Not by in-competition testing?

THE WITNESS: Yes, that is correct. The ones that are caught are caught by accident.

15 THE COMMISSIONER: I guess theoretically if the rumors had been spread around and those who were knowledgeable made an effort to do so and you had a target system in practice, then you would have detected some of the people who would have been avoiding detection?

20 THE WITNESS: Yes, with the target system that we have got in place now, we have the opportunity at a reasonable cost to go out and get evidence which in the past nobody really has been willing to come forward with it.

25 I mean it is fine to talk about the rumors, but nobody ever comes forth and is prepared to put their

name to the rumor. This way with the target system at least we can go out and collect hard evidence.

5 THE COMMISSIONER: You can check the validity of the information, but you don't need rumors so much I think if your coaches and all those knowledgeable of the track and field scene, had been more vigorous perhaps they could have done something about it.

THE WITNESS: Yes.

10 THE COMMISSIONER: I mean it is easy to say "we won't act on rumors" but sometimes rumors are based on an assessment by an expert. It may be a matter of opinion, it is not a rumor?

THE WITNESS: But --

15 THE COMMISSIONER: It is obvious to me that a good coach, from what I have learned so far, wanting to assess an athlete would be able to give an opinion --

THE WITNESS: And we have already --

20 THE COMMISSIONER: -- that in his opinion this or that athlete is in all probability benefiting by performance enhancing drugs which results in change of physique, manner, demeanor, and performance. That becomes an opinion. That's no longer -- if I were to say it and I don't know anything about it, it might be rumor, but I would think if it were Gerard Mach or any of your outstanding coaches that really directed their mind to an

analysis being goaded on, if you like, by all the gossip we now say was rampant, Mr. Smith is suggesting everybody is talking about every time you are in a locker room, that might have detected, not just Mr. Johnson anybody else.

5 Anyway, I am musing myself.

Go ahead, Mr. Bourque.

MR. BOURQUE: Thank you, Mr. Commissioner.

MR. BOURQUE:

10 Q. With respect to support for the out-of-competition testing program, the principles upon which it is based, you have addressed the issue with Mr. Armstrong of the athletes and where they opposed it and where they supported it. And I wonder if you recently
15 have made note of any influence the press might have had on the public's thinking about urine testing?

A. Yes, I mean I am particularly sensitive in this area as I am sure you can imagine. And I mean we have -- for instance, in the last few weeks I have taken from the Toronto Star two editorials, one entitled "Jar Wars" and the other entitled "In Ben's Long Shadow". Where in Jar Wars they are talking about Canadian transportation workers being tested in the United States and this amounts to an offer that can't be refused. Yet, 25 the tests are a gross invasion of privacy and dignity, the

results don't even prove someone is impaired on the job.
And then they have two weeks later "In Ben Long Shadow"
where they can't understand why we are not having Mr.
Sern (phon) provides on a -- I mean there is just total
inconsistency in the position.

5

And I feel I am sensitive to it and I think
the athletes are sensitive to it also --

10

THE COMMISSIONER: Well, I am not so sure
that the question of testing in the work place is a true
analogy for testing of an athlete.

All athletes who want to participate in the
game must comply with the rules. There is no right to
participate in the Olympics.

15

THE WITNESS: I totally agree with you. And
I am a protester. I mean I am in favour of testing. I
believe it is a way, one of the ways, not alone, but it is
one of the ways to deal with the problem.

20

At the same time, I sit back and I say, hey,
I mean these athletes aren't going to hurt anyone except
themselves by taking these substances, they are cheating
an event, and they might be getting a disadvantages. Some
of these other people that they are talking about being a
gross invasion of privacy are flying airplanes and driving
trucks that could kill us.

25

I mean I can imagine the athletes sitting

back and saying, hey, you know I might cheat, but I am not going to hurt anybody running down that track, and yet I am being put in a different category than these other citizens of our country and --

5

THE COMMISSIONER: Well, Mr. Savage, life isn't always fair.

THE WITNESS: I appreciate that, I also want -- I mean, the athletes are important to us. They have got to understand --

10

THE COMMISSIONER: I understand. It is important to all of us, that's why we are here, Mr. Savage.

THE WITNESS: That is correct.

15

MR. BOURQUE:

Q. Finally, Mr. Savage, your involvement on the Canadian Track and Field Board of Directors is, as I understand it, voluntary?

A. Totally voluntary.

20

Q. Can you just tell the Commissioner briefly in what your volunteer contribution as a member of the Board has consisted of in the past couple of years?

A. Over --

25

THE COMMISSIONER: Well, a lot of heartache.

5 THE WITNESS: A lot of heartache. And as I learned in Monte Carlo after one of the presenters presented a paper on the psychological effects of using steroids, I seemed to have all the symptoms to a steroid user has except the euphoria, and I am not sure whether that is going to come.

10 Probably since I -- over the last two years, I have probably spent over the last year an average of 10 hours a week on Canadian Track and Field Association work. And in 1987, I would guess that would go up to 25 or 30 hours because of some of the problems we had.

15 We didn't have a President for a period of time, we had some major problems with Mr. Johnson's contracts, which the CTFA had to be part of, and I happened to be the only lawyer they could afford because I am free.

20 We had problems in the Sudbury World Junior Championships that had to be sorted out. We had to hire a new president to replace Mr. Wedmann. Last year I spent an incredible amount of time, volunteer time, on CTFA work.

The only person on the CTFA I would suggest that spent more time is Mr. Ouellette.

25 Q. And finally if it is appropriate to address the issue now, and I will leave that in the hands

of the Commissioner, I would ask you to give us your thoughts on the future domestically and internationally in testing.

5 A. Yes, I anticipated that question and put down some thoughts.

I mean first off I think that domestically, testing has to be done by a third party organization. I don't believe it can be done by the sport. I don't really believe it can be done by Sport Canada or the Sport Medicine Council. It is a policing function. And I think it should be dealt with --

10 THE COMMISSIONER: Why shouldn't it be done by the sports federations themselves? You start with the fact that sports federation in Canada are all funded by the Government of Canada to various percentages, sometimes almost entirely, and it is a condition of that funding that you submit a proposal for doping control. You are required to have all your athletes enter a contract with the federation, not with Sports Canada. It is a condition of their funding that they agree not to have possession or use of anabolic steroids or any other banned substance. 15 And the federation really gets this money conditionally, in a sense, that's the deal.

20 Why should it be their responsibility to make certain that you comply with the conditions of the

grant, that you keep your sport compliant with the rules.
That's what the money is there for.

THE WITNESS: I think --

5 THE COMMISSIONER: Why say that's -- the
burden of funding has got to be a completely extra burden
on top of what the funding is now.

THE WITNESS: Well, first off the funding --

10 THE COMMISSIONER: I have got an open mind
on this, I am just trying to think it out loud, but I hear
this from everybody: Well, we get all the money, and we
get the funding, and we do a good job, but the policing of
it has got to be somebody else.

Well, Sport Canada doesn't have coaches,
they don't have people at the track meets everyday, they
don't have trainers, masseurs. You people have all that.
You hire these people. And in particular, the coach is in
the best position of everybody else to, if he is
conscientious, to assess the scene. And why are you going
to have somebody down in a lab, I don't say this
disrespectfully, a bunch of scientists who may not know
anything about track and field at all. Why is that?

20 THE WITNESS: Okay. First off, the solution
to the doping program is not any one thing. There are a
group, there is a package.

25 THE COMMISSIONER: No, but you throw your

hands up and say it has got to be a completely independent body and they have got to take it all over there, the policeman, you may be right, I hear that from many sources, and it's got a lot of support, but I have got to think about that.

5

THE WITNESS: Okay, but maybe I can assist you in your thinking.

THE COMMISSIONER: Go ahead.

10

THE WITNESS: First off, I would suggest that the third party organization, should be set and I will get to why as I go along. But the organization has to be --

THE COMMISSIONER: That would not be Sport Medicine Council?

15

THE WITNESS: I don't think it should be Sport Medicine Council or Sport Canada. The organization should be assisted by any advisory board of the users which would establish process, procedures, and programs, taking into consideration the requirements of the individual sports, but really have no part in the implementation of the program.

20

The program, once it is designed, should be implemented by somebody who is totally neutral from the sport so we don't have any of these suggestions that things are being done improperly to protect the sport or

25

to protect athletes.

THE COMMISSIONER: I understand.

THE WITNESS: The organization that does it
has to have the authority to require the co-operation of
5 the event co-ordinators and directors at events where
testing is being done. And it will be in effect the
policing arm of the anti-doping organization.

It would be, I would submit, a lot less
expensive in the long run to have one organization
10 running -- designing and running this program for all
sports in Canada than it is for having 33 sports out there
doing exactly the same thing at the same time. I think it
can be cost effective from that point of view. And I
think it can take a way a lot of the questions that are
15 placed upon the sports --

THE COMMISSIONER: Who is going to select
those to be tested?

THE WITNESS: It is going to, once the
program is designed --

20 THE COMMISSIONER: Who are "they"? You say
they are not connected with any sports?

THE WITNESS: They will not be sport
specifically connected.

25 THE COMMISSIONER: So what do they know
about the game?

THE WITNESS: That's where you get the advisory group in who designs the program with them.

THE COMMISSIONER: I see. They would all be by lot anyway so you would just have names.

5

THE WITNESS: But the program may be different for different sports. I mean you may have in terms of out-of-competition testing in track and field, it may be decided that the national team is the body we deal with.

10

THE COMMISSIONER: For some sports, I understand.

THE WITNESS: For another sports it may be another body, or a different group.

THE COMMISSIONER: Go on.

15

THE WITNESS: I think penalties, and this is getting into your second point. I think we have to reconsider our penalties for anti-doping. And I am certainly making this recommendation to the Board of the Canadian Track and Field Association to take to the IAAF, but I think we should consider adopting domestically a penalty program that would see us not enter a team into the next World Championships or Olympic in any sport that has two positive tests at any international event in a four-year period.

20

That means, and you have suggested, and a

lot of people have suggested, the first person that knows that somebody is using banned substances is likely that person's peers --

5 THE COMMISSIONER: So far the only person penalized is the athlete.

THE WITNESS: Right, because the peers and coaches other than the athlete are the ones that are likely to know first.

THE COMMISSIONER: Or should?

10 THE WITNESS: There is no incentive for them to squeal on their buddy. Now, if we apply some kind of penalty against the entire sport, I think we are going to cause the sport to be more vigilant internally and we are going to have more impetus on people coming forward and putting that together with the --

15 THE COMMISSIONER: And assume the responsibility?

THE WITNESS: That's right, and putting it together with the new investigative powers we have put into our procedure whereby they can come forward and say, hey, look into this, you can put the two together and even with a third party policing organization, you have still got the impetus on the sport with the penalty to come forward and provide the information.

25 I think the carding system should be

changed, the base rankings only on events that are tested, which you heard from Mr. Smith, but I also think they should only use performances of athletes from countries have out-of-competition domestically.

5

THE COMMISSIONER: Out-of-competition testing domestically?

THE WITNESS: Yes. Right now you would say that if the Scandinavian countries, Great Britain and Canada are the only countries with out-of-competition, those are the only athletes we consider for that ranking.

10

I think the Sport Medicine Council should be asked to assume an educational portion of the program. And I think that should include an educational package aimed primarily at the young athletes. And in addition, they should do research and education in the area of alternatives to doping, including nutrition training and other alternatives to doping.

15

And that's one of the reasons I feel the Sport Medicine Council should not be the policing arm.

20

THE COMMISSIONER: They are the educator?

THE WITNESS: They should be the educator, they should be the athletes' friends. The police tend not to be the athletes' friends in most situations.

25

It is really difficult, I believe, to be the policeman and the educator at the same time. And I think

that that's appropriate to split it that way.

I think we have to develop some policies that will minimize the interference between the doctor-patient relationship as it relates to athletes.

5 I mean as it stands now, doctors of athletes

are prohibited from prescribing many substances to athletes because they are on the banned substance list.

And I think we have to sit down and look at a way of allowing the doctor to prescribe what the doctor feels is in the best interest of the athlete and perhaps if that turns out to be a banned substance providing some reporting period and voluntary

withdrawal-from-competition period to match in with that, but the doctor has -- we can't tell the doctor you can't prescribe this substance for an athlete if the doctor really believes that's the substance the athlete should be taking for the illness or injury.

20 We have to develop the system. It takes into account the athlete's right to feel that they are being treated fairly, and that if an error is made, they will have a reasonable chance to prove their innocence.

THE COMMISSIONER: Well, you have an approval provision I notice in your --

25 THE WITNESS: Yes, I mean it is the whole system. It is the obtaining of evidence and things like

that, it is the second lab, all these things that give an athlete a feeling of confidence that if an error is made they can correct it.

THE COMMISSIONER: Right.

5 THE WITNESS: Internationally I think if we want to take a leadership role in this area, we must gain representation on international bodies that are developing the anti-doping programs, procedures, and policies. We must lobby for stronger and more effective anti-doping
10 penalties.

We must require that all members of each sport, this is internationally, develop out-of-competition testing programs through the development of sport specific standard operating procedures.

15 And the Ottawa conference gave me a great insight in this area where I spoke to people from New Zealand and from a number of other countries who were saying we would like to do it, but how do we do it, what do we do. The sports should be internationally creating a generic program to be applied within the country and then the sport should set up an independent organization to audit the operation of these programs to make sure that they are being --
20

25 THE COMMISSIONER: That's the doping control program?

THE WITNESS: The out-of-competition domestic doping control programs because we have to satisfy our athletes that the rules --

5 THE COMMISSIONER: Who is "we"? So far up to this point you have --

THE WITNESS: I am talking about Canada.

THE COMMISSIONER: All right. But so far I hear no role for the Track and Field Association at all, this is all going to be done by everybody else.

10 THE WITNESS: No, I --

THE COMMISSIONER: Well, so far I haven't heard what contribution the Track and Field Association is going to make.

15 THE WITNESS: Okay. What we are doing now is we are pushing for these programs right now with the IAAF.

20 THE COMMISSIONER: What's the responsibility of the Track and Field Association in the future for doping control? I realize they may be penalized if --

THE WITNESS: I think each --

25 THE COMMISSIONER: -- each team may be penalized and say well, you can't compete in the next Olympics because you had some disqualifications, but should part of it come out of the normal budget for the

CTFA? Should you contribute, if it is going to be a cost factor, why shouldn't the sports federations themselves make at least some pro rata contribution towards it? This is just fresh money you are asking for out there.

5

THE WITNESS: Yes, there is --

THE COMMISSIONER: I have got no firm -- I am just thinking out loud, perhaps it is always dangerous, people don't understand it, it doesn't mean it is my view.

10

THE WITNESS: Well, I mean I think in some ways by taking the whole thing under one heading in fact we are going to perhaps cut down on some of the money that would be spent if we did it in each way. I mean, you have got to realize in terms of track and field raising discretionary funds, in terms of almost anything in track and field --

15

THE COMMISSIONER: What I am concerned about is a program which would not commit the sports organization itself, sports federation, which has the direct contact with the athlete to some sort of responsibility to see that the rules are complied with and not just have coaches and trainers and all facilities for competition and leaving it entirely to some independent body out there to police it. You may be right, but I am not sure about that.

20

THE WITNESS: Well, you see I would suggest

to you that the independent body really isn't policing; although, it is a policing function. The independent body is really collecting samples. The rules are the sports organization's rules, the penalties are Sport Canada, the sports organization the IAAF penalties, all those things.

5 The one thing I am suggesting is that the collection of the sample --

THE COMMISSIONER: I understand.

10 THE WITNESS: -- and the drawing of the numbers and that be done independent.

THE COMMISSIONER: Independently. So instead of your volunteers going out, we would have an organized group?

15 THE WITNESS: You would have our volunteers and you would have weightlifting's volunteers and you would have everybody together.

THE COMMISSIONER: They would no longer be track and field representatives, they would be representatives of this independent agency?

20 THE WITNESS: That's --

THE COMMISSIONER: I understand.

THE WITNESS: That's correct. I was talking about the auditing of international programs.

THE COMMISSIONER: Right.

25 THE WITNESS: And I think the key -- there

is no athlete -- there is no athlete or no individual in Canada who uses a street drug because someone in the U.K. is using a street drug, but I think athletes in Canada are tempted to used banned substances because they believe their competition is using banned substances. Somehow or other we have to establish to all athletes that the rules are being applied equally and fairly and firmly throughout the world. And the only way we are going to do this, I believe, is by requiring lobbying and getting international sports organizations to set up standard operating procedures and then to monitor those procedures so that I can with confidence tell track and field athletes the rules are being applied the same in East Germany and so on.

I believe that has to be done. We have to lobby for that.

THE COMMISSIONER: That's what we are doing, the country is doing it.

THE WITNESS: Yes, that's right. And I think that is part of the future.

And finally I think we have got to lobby for the rationalization of the banned substance list and make it more sport specific rather than utilizing simply the games list developed by the IOC. I am no scientist, I look at the banned substance list, not in the area of

steroids but in other areas, and I often wonder why some of those substances are in there. I think it is important to go over the list and determine what really should be there and what shouldn't be there and have some philosophy as to how a substance gets on the banned list because I think that will make enforcement a lot easier by rationalizing the list and by being able to show athletes that the substances that are on there are on there for a very good reason.

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10

THE COMMISSIONER: Thank you. Any further questions.

MR. BOURQUE: I have no further questions.

THE COMMISSIONER: Any other questions.

Mr. Fournier.

15

MR. FOURNIER: Mr. Commissioner, I will -- my mother tongue is French, I will try it in English.

THE COMMISSIONER: All right.

MR. FOURNIER: Now, if I see you become solitude, I will --

20

THE COMMISSIONER: We will give you very careful attention.

MR. FOURNIER: -- I will call the translator.

THE COMMISSIONER: All right.

25

--- EXAMINATION BY MR. FOURNIER:

Q. Just a couple of questions concerning Mr. Ouellette. I understand you were both elected at the same time?

5 A. That's correct.

Q. In 1986, right?

A. That's correct.

Q. I know for a fact that Mr. Ouellette was not at the CTFA from 1983 to '86. So, he came on the
10 Board at the same time as you?

A. That's correct.

Q. All right. Now, during that time
that's -- I have seen the testimony of Mr. Francis, and he
said that he had a meeting with Mr. Ouellette during the
15 autumn of '86. I know for a fact it is the beginning of
January '87, but that will be --

THE COMMISSIONER: Wait a minute, Mr.
Fournier.

MR. FOURNIER: We will wait for that.

20 THE COMMISSIONER: Yes.

MR. FOURNIER:

Q. Let's start from '86, okay. There was
a meeting with Mr. Francis and Mr. Ouellette, according to
25 Mr. Francis. And he says that at page 4242 concerning Mr.

Ouellette. I am quoting Mr. Francis.

He also went further than that and said that if in fact random testing was put in he would attempt to become involved in the process so that we would find out and have some advance warning.

5 Okay. You are aware of that testimony?

A. I wasn't aware of the dates, but I was aware of the testimony.

10 Q. Okay. Now, let's talk about that.

First before 1986, did you know Mr. Ouellette?

A. Not at all.

Q. Okay. Now, since let's say the autumn of 1986, let's even go back to September '86 to make it sure, until the Seoul incident, which was in --

15 THE COMMISSIONER: September '88.

MR. FOURNIER: September.

THE COMMISSIONER: '88.

MR. FOURNIER: I think the 25th.

20 THE COMMISSIONER: 24th.

MR. FOURNIER:

Q. Thank you. At any time during that time did Mr. Ouellette try in any way, you know, to do anything to postpone implementation of the CTFA

out-of-competition program?

A. No, not did Mr. Ouellette or anybody else on the Board of Directors of the CTFA.

Q. I understand the committee you were in
5 was one of the 14 or 16 committees of the CTFA, right?

A. That's correct.

Q. On that committee, how many people were
there?

A. Four at the --

10 Q. Let's start at the beginning when it
is, you know --

A. It was me.

Q. It was you?

A. It was me until we had the meeting in
15 September.

Q. You were the only lawyer on the Board;
so, it was you?

A. It was me.

Q. Okay. And then when did you start to
20 get somebody else?

A. Well, Casey worked with me on and off
over the summer, Casey Wade who was on staff. And then
the committee had a meeting, its first meeting, which I
believe was September 19th --

25 THE COMMISSIONER: '86.

THE WITNESS: -- I believe it was 1987, yes.

THE COMMISSIONER: '87, sorry.

THE WITNESS: I am sorry, October the 17th,
1987.

5

MR. FOURNIER:

Q. Okay. Now, Mr. Wade starts to work
with you, right?

A. That's correct.

10 Q. And then who else comes in?

A. Then when we have the committee meeting
then Ray Lazdins, Susan Heather and Richard Hughson.

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25

5 Q. Now did any of those persons at any time, you know, until the 24th of September, 1988, talk to you about Jean-Guy Ouellette, you know, concerning he was trying to do something to postpone implementation of the CTFA out-of-competition testing program?

A. No.

He'd be the other person doing more hours than you concerning --

10 A. During that period of time, yes. I mean, he just put in an incredible number of hours.

Q. Now, can you sum up, in essence, why was he doing all those hours?

15 A. Well, the job of being chairman of the board of the CTFA is a pretty significant job, albeit a volunteer job. First off, he had to deal with the office on a fairly regular basis. Secondly, there were places he had to go, appearances, events he had to attend. There were problems that would arise from time to time along the way which would be directed directly to him. Then when 20 Mr. Wedmann resigned, basically the personnel committee, which was headed by Mr. Ouellette, had to take over supervision of the staff for a period of time until Mr. Wedmann was replaced. There was an awful lot of time that 25 he spent on CTFA work.

Q. Now at any time, September '86 to the 24th of September, 1988, did at any time Jean-Guy Ouellette try to say: "I would like to be on your committee"?

5

A. No, not at all.

MR. FOURNIER: Thank you.

THE COMMISSIONER: Thanks, Mr. Fournier.

Any other questions? Will you be long, Mr. DePencier?

10

MR. DePENCIER: No, I won't.

THE COMMISSIONER: I wasn't trying to curtail you. I was just inquiring.

--- EXAMINATION BY MR. DePENCIER:

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Q. Mr. Savage, my name is Joseph DePencier, and I'm here representing the federal government and Fitness and Amateur Sport.

20

I want to ask you to reconsider a point you made a few minutes ago in speaking about the two Toronto Star editorials. I think you said -- you made the comparison between the position taken in one with respect of transportation workers and the position taken with respect to an athlete in the other. In the course of that

25

answer, I think you said that an athlete who takes steroids hurts no one else but himself. Did I get that correctly?

5 A. And I think I mentioned himself and his competitors who are against him. I mean, he puts himself in an unfair advantage vis-a-vis those competitors. I certainly should have said it, if I didn't.

10 Q. That's the point I want to make. You would agree that an athlete who takes steroids victimizes his competitors; he cheats them?

A. Yes, that's correct.

15 Q. And I think you would agree to some extent, particularly in this climate, he cheats all athletes because he casts a shadow or a pall over all others?

A. Yes.

Q. And he tarnishes the reputation of his sport and of athletics as a whole?

A. Sports as a whole.

20 Q. So you would agree with me that an athlete who takes steroids victimizes many other people or interests in so doing?

A. Yeah. I have no problem. That's correct.

25 MR. DePENCIER: Thank you very much.

THE COMMISSIONER: Mr. O'Sullivan?

--- EXAMINATION BY MR. O'SULLIVAN:

5

Q. Mr. Savage, my name is Terry O'Sullivan, and I represent Mr. Robert Gray.

I'd like to question you, Mr. Savage, about certain differences in recollection between you and Mr. Gray about two or three events you testified about this morning, if I might. I'd like to start by asking you one or two questions about the so-called "picnic table conversation" --

A. Certainly.

Q. -- if I can refer to it as such, in Ottawa at the Nationals.

As a preface to my question, I might -- and tell me if I have any of your evidence wrong -- go back over your evidence. You said that at that time, Mr. Gray went to look for Mr. Dajia?

A. That's correct.

Q. And so Mr. Dajia was, as you understood it, invited to the meeting?

A. Definitely invited. It was intended he would be there.

Q. You also, I think, candidly said that you weren't sure you would have recognized him had he been on the periphery?

A. I would not have. I'd seen him once in
5 my life.

Q. And I think Mr. Armstrong read to you certain of Mr. Dajia's evidence in which he attributed I believe to Mr. Dupre remarks about the hands of the CTFA being tied insofar as the threat by Sport Canada to cut
10 off funding was concerned. Do you recall remarks to that effect being made during the conversation?

A. I don't recall any remarks concerning his hands being tied, but certainly part of the discussion concerned the Sport Canada funding situation and how it impacted on the CTFA and, if I recall rightly, also what we at the board level thought would happen when we made
15 the decision. I mean, we had believed that these athletes may have to pay their own way if they competed on a Canadian team, but we certainly never believed there would be any concept of cutting the funding off for track and field if the athletes were made part of a CTFA team.
20

Q. But whether those actual words were used, the thrust of the conversation or the remarks would have been that the position of Sport Canada had put the
25 CTFA in a very difficult situation?

A. Yes, definitely.

Q. All right. You also indicated to Mr. Armstrong that after Mr. Dajia testified to that effect, that he had been at this meeting for part of it, I think you said something like 10 minutes or so, and that he had heard those remarks and made certain statements in response, that you called Mr. Gray --

A. Yes, I did.

10 Q. -- the next day or the day after. And would it be fair to say that a part of the reason for that call was to check Mr. Gray's recollection of who was at that meeting?

A. Yes, it was.

15 Q. And in fairness to you and to all of us would have to recall events that occurred a long time ago, in making that call, you would have been seeking to check his recollection against your own?

A. Correct.

20 Q. And again in fairness to you, a fair inference to draw from that would be that you weren't then 100 percent sure who had been at the meeting?

25 A. Well, the interesting thing is when I was told that Mr. Dajia was going to say he was at the meeting and give that evidence, my initial reaction was he wasn't there. I mean I know who was there, and he wasn't

there. And then I guess -- I mean, I started to say, "Could I be wrong?" I mean, you always have, when someone continually insists that this happened and this happened and you can't remember it -- but I mean, I'm positive he was not at that meeting. He was intended to be there, but he wasn't there.

Q. And if he had been around the edges for some part of that meeting, though, it is fair to say that you might not necessarily have recognized him?

A. I'm sure that I wouldn't have recognized him.

Q. Are you able to tell us today the order in which people came to or left that meeting?

THE COMMISSIONER: Well, a significant part 15 is not merely his presence but the words he was supposed to have spoken.

MR. O'SULLIVAN: No, I was trying to get the length of Mr. Savage's attendance at the meeting.

THE WITNESS: My recollection is that prior 20 to the meeting, Paul Dupre -- I can't remember whether it was Paul or Jean-Guy and I were talking to Cecil Smith at the same picnic table. So I would have been there first along with either Paul Dupre or Jean-Guy or possibly both of them. I don't remember. We did have a conversation with Cecil Smith immediately prior to the meeting with Mr.

5 Gray, but Mr. Gray was -- like the deal was when we left the field together, I would go and find Jean-Guy; and Paul, he would go and find Peter Dajia, and we would meet at a certain place in the stands, and ultimately I drifted over I think with either Paul or Jean-Guy, I'm not sure which one, to the picnic table and that's where we ended up meeting.

10 MR. O'SULLIVAN:

15 Q. Are you now able to remember in what manner people left, that is, whether you left ahead of others, whether some stayed behind you, whether Paul left at the same time?

20 A. I left with Paul.

25 Q. You left with Paul?

 A. I left with Paul because we were -- Jean-Guy had to leave first, I believe, to give out some medals. Paul and I left at the same time because we were stopped by a CBC reporter, I think it was Brian Wilson, who wanted to know what was going on, and we had a very short conversation with Mr. Wilson. I think it was Brian Wilson.

 Q. And that left Mr. Gray speaking to whom, as you recall?

25 A. Mr. Gray had gone by then. Mr. Gray

left earlier than Paul Dupre.

Q. And when you spoke to Mr. Gray and you asked him what his recollection was, and this was before he testified, he advised you that his recollection was that Mr. Dajia had been there for a period of time?

A. That's correct.

Q. And you were candid enough this morning to say that in respect of a meeting that you had with Marilyn Booth, to acknowledge that people's memories may be less than perfect?

A. That's correct.

Q. I think you said you acknowledged that a meeting had taken place in August of 1988, but you had now no present recollection of it?

A. Yeah. It wasn't August now. Now I know where it was. It was January, but --

Q. Or January?

A. We did my chronology and it wasn't in there, and then we found it subsequently in Marilyn's chronology, and I checked my book and sure enough, I was there.

Q. But today you have no present memory of that?

A. I just don't have any present memory of the meeting.

Q. Now --

THE COMMISSIONER: I have no difficulty recalling where I've been for a long time lately.

5 MR. O'SULLIVAN: Mr. Commissioner, you have the advantage on the rest of us of going home and watching on TV where you've been.

MR. O'SULLIVAN:

10 Q. Going back, if I could Mr. Savage, take you back to December of 1986, which was the committee hearing with respect to Mr. Dajia, Mr. Spiritosa and Mr. Gray, and you had said this was your, I think you used the expression, "baptism by fire" into banned substances and doping control procedures and such like. And I'm told, 15 and correct me if I'm wrong, that this took place at the Cambridge Hotel here in the city from something like 4:30 in the afternoon to 2 o'clock in the morning?

20 A. That's correct. In fact, I think it was even later than that when we left. I think it gives the hours in my report.

Q. Into the wee hours of the morning, in any event?

A. It was a long time.

Q. With virtually no breaks?

25 A. With absolutely no breaks for us.

Witnesses came and went, but we stayed.

Q. And you also described in your evidence with Mr. Armstrong, it was a rather free form exchange in which there wasn't -- while it was on the court model, people did not get up and go to a witness stand or a witness seat but were rather seated around a table?

A. That's correct, except for the fact that it did proceed with the CTFA presenting its evidence and then Mr. Gray presenting theirs and with witnesses basically excluded.

Q. And there was no transcript of those proceedings taken?

A. No, there wasn't.

Q. And Mr. Gray, you said in addition to representing himself, was also acting as counsel for Mr. Spiritoso and Mr. Dajia?

A. That's correct.

Q. And it's my -- I'm told and indeed have been given a copy of a typed submission that was submitted on behalf of Spiritoso and Dajia prior to the hearing. I believe you no doubt have seen this. It was at the hearing. Let me show it to you to refresh your memory. It was submitted by Mr. Gray, signed by Mr. Gray on behalf of Spiritoso and Dajia. Perhaps I can show you that to refresh your memory.

THE COMMISSIONER: Was that before the appeal commenced?

MR. O'SULLIVAN: This was for use at the hearing to testify.

5 THE WITNESS: I believe -- I think either Mr. Armstrong or Mr. Bourque has a complete copy of the material that Mr. Gray presented, and in fact it was a package of material that's about an inch-and-a-half to two-inches thick, and it had within it articles and documents and letters and so on.

10 MR. O'SULLIVAN: Quite so. And the headline is -- I can enter this in as an exhibit, Mr. Commissioner, if you like. Mr. Armstrong has a copy I believe already. It's entitled "Documents on Behalf of Spiritoso and Dajia".

15 MR. O'SULLIVAN:

Q. There are two things I'd like to put to you, Mr. Savage. The first is that there are three statements contained in the submission, tab 3 being a submission of Robert Gray, pages 9 to 15, and I'm happy to let you look at it if you like, but I suggest to you there is nothing in that statement in which Mr. Gray denied the use of banned substances. In fact it was, if I might call it, a technical defence raised on doping control

procedures and sample taking procedures?

A. I don't recall. I'd have to read it to make that assessment.

5 MR. O'SULLIVAN: I apologize, Mr. Commissioner, to Mr. Bourque and others for not having copies. That was delivered to my house late last night from Mr. Gray's files. In fact you'll see from the white-out on it that it's an original, a very original copy.

10 THE WITNESS: With a quick look over it, I don't see anything in there where he denies having used --

. THE COMMISSIONER: His evidence was that he denied using the substance which is alleged to have been detected.

15 MR. O'SULLIVAN: That was his evidence with respect to what Mr. Spiritoso and Mr. Dajia said.

THE COMMISSIONER: Yes.

MR. O'SULLIVAN:

20 Q. Mr. Spiritoso and Mr. Dajia also had statements in here, and the statement I was referring to at pages 9 to 15 is that of Mr. Gray. The last page, 15, of the document, Mr. Gray states:

25 "This statement is my recollection of the events that occurred from the date of my

producing alleged positive urine samples to the date of my retirement and resignation.

It is offered for the purpose of giving the OTFA hearing evidence and not because of any desire on my part to take part in the hearing process."

Was it your recollection or is it your recollection now as it was Mr. Gray's evidence that he originally sought to appear only as counsel for Dajia and Spiritoso and then when he appeared at the hearing said: "I'd like to be bound by the same result, whatever the decision is."?

A. I don't recall that. I'm sorry.

MR. O'SULLIVAN: All right. Now I have referred to this, and I'm in, Mr. Commissioner, your hands and my friend Mr. Armstrong's hands as to whether you would like this to be made an exhibit.

THE COMMISSIONER: I don't think it's necessary. It's really quite a collateral issue.

MR. O'SULLIVAN: Yes..

THE COMMISSIONER: I take your statement for it, that there is nothing in there that addresses the issue one way or the other.

MR. BOURQUE: In any event, you'll recall, Mr. Commissioner, that Exhibit 151 is the statement of Dajia, which is very similar to the statement of other

two.

THE COMMISSIONER: Yes. I remember that.

MR. O'SULLIVAN:

5 Q. Now during the inquiry, witnesses were called and you and the other members of the committee listened to those witnesses over the period of 10 or however many hours you sat there, and you indicated that you took notes, and one of the notes said that Mr. Gray
10 denied taking any steroids?

A. That's correct. Mr. Bourque has those notes.

15 MR. O'SULLIVAN: I wonder if I might have them. Mr. Bourque was kind enough to show them to me this morning, and I wonder in fairness to you if I may have them for a moment and put them in front of you. I'm going to ask a question about them.

THE COMMISSIONER: Have you seen these, Mr. Armstrong?

20 MR. ARMSTRONG: Yes, I've seen those notes.

MR. O'SULLIVAN:

Q. I'm showing to you seven pages of notes apparently from a pad, and I would ask you if those --

25 A. Those are notes that I made at the

hearing.

Q. And could you take me to where on the notes you deal with Mr. Gray and that aspect of what you say was evidence?

5

A. At the end of the notes, and there's just simply a notation that says "never taken steroids".

Q. Yes. You have the words "Rob Gray" at the bottom of the second last page, dash, "never taken steroids". Were these notes taken chronologically through 10 the course of the events?

A. Yes. They are still attached together.

Q. And would it be fair to say that indicates that remark -- you wrote that remark at the end of the evening?

15 A. Definitely.

Q. And Mr. Gray has indicated, I believe the substance of his evidence was something like he was asked as the evening ended whether he had taken steroids, to which he replied something to the effect "that's not 20 the issue here"; do you recall that?

A. No, I don't.

Q. Is there any possibility that you have misapprehended his answer, any possibility today that you misapprehended his answer having regard to the lateness of 25 the hour and your undoubted fatigue?

A. Not in that particular case because originally -- prior to the hearing being held, some time before, I had received -- the investigation was originally to take place before Spiritoso and Dajia were available to

5 testify, and I had seen copies of what apparently was proposed to be the affidavits to be filed by each of them concerning their position in the matter. Each of the affidavits were worded, if I might say, very cutely to get around the question of whether they had or hadn't taken

10 steroids, and that question was very much in my mind. You know, "Don't tell me you haven't taken 19-nortestosterone or anything like that; have you or haven't you taken steroids?" There is no question in my mind that that question was put to them on the basis of steroids and it

15 was answered in that way.

Subsequently, I might add, that after an appeal that Mr. Gray launched which went to an appeals committee of the Canadian Track and Field Association and was held at the Valhalla Inn and I was asked to go and present the position of the investigative body, I spoke to Mr. Gray outside after the hearing, and at that time I was aware that they had admitted to the Canadian Olympic Association that they had taken steroids, and I put the question to him: "Why did you lie to us?" I mean, I said: "You didn't have to lie. If you wanted to stand on

procedure, stand on procedure." He said he felt that the procedure that was being followed was improper and therefore there was no problem with him telling a lie. I consider this a very serious situation.

5

Q. Now that's a gloss on what you said this morning, if I took a note correctly. What you said this morning --

A. I didn't talk about the meeting at the Valhalla Inn this morning. Nobody asked me.

10

Q. No, but you said this morning something about you having said to Mr. Gray that his reinstatement, or something, would be more difficult because he had lied?

15

A. No, I suggested to Mr. Gray, when we talked about material that he was going to present for his reinstatement that --

THE COMMISSIONER: That's at a later stage now?

THE WITNESS: That's at a much later stage.

THE COMMISSIONER: The Valhalla Inn.

20

THE WITNESS: Yeah, that he should deal specifically about the question of the lie because I considered that a very serious thing, that it wasn't something that had to be done.

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MR. O'SULLIVAN:

Q. Well, I appreciate the thrust of your evidence that you believe that's what Mr. Gray said. You also know that Mr. Gray's recollection, he did not say 5 that, and your counsel I think was kind enough to hand the transcript to me, and I have more or less summarized, I think fairly, what Mr. Gray said his recollection was.

In your notes you have those two remarks. Are you able to tell us now who asked that question?

A. Yes, I did ask the question. I think if you look at the notes -- do you have the notes, Mr. Bourque, that were prepared by Mr. Bulloch, which were made immediately after the 26th? I think he also indicates in his notes...

15 MR. ARMSTRONG: I don't know what Mr. O'Sullivan's view is, but I don't know, since Mr. Bulloch hasn't been called as a witness, that --

THE COMMISSIONER: Well, Mr. Savage said he discussed the matter with Mr. Bulloch.

20 MR. O'SULLIVAN:

Q. Are you saying that Mr. Bulloch's recollection from his notes is the same as yours?

A. That is correct.

25 Q. And your counsel has shown me those

notes.

What I'm trying to get at is this. Let me go straight to it. We have a situation where you are aware that Mr. Gray brought the injunction proceedings?

5

A. Yes.

Q. And you are aware that in those proceedings he did not file any material that suggested he did not take anabolic steroids?

10

A. I know nothing about the injunction proceedings other than that there was an injunction applied for.

Q. Will you take that from me as a statement?

A. Certainly.

15

Q. All right, because that material is before -- all the material that was filed in the proceedings has been filed with the Commission.

20

In December -- that is in July of 1986. In May of 1987 or April or May of 1987, he admits using steroids to the Canadian Olympic Association, and you're aware of that?

A. Yes, I am.

25

Q. You are also aware, I take it, that on his appeal to the Canadian Track and Field Association from the decision of your committee, that it was no part

of his argument on that appeal that he had not taken anabolic steroids?

5 A. There were a couple of appeals. There were some appeals to the board of the Canadian Track and Field Association which I of course did not attend upon. The only appeal that I attended upon was the appeal at the Valhalla Inn to give evidence of what happened at the investigative hearing, but I do know he made a couple of appeals to the board of the CTFA, but because I'd been on the investigative body along with Mr. Lund, we of course were not able that sit in on those and excused ourselves during the proceedings.

10 Q. So far as you are aware today, from what you know, that was not any part of his position on
15 that appeal?

A. I don't know what his position was on the appeal because I wasn't there.

Q. But you have no evidence to that effect, in any event?

20 A. No, I have no evidence that was part or wasn't part.

Q. All right. Where I'm trying that get to, in fairness to Mr. Gray -- having regard to his position not only in the athletic community but in other communities, it is a very serious matter, the allegation
25

that he would have deliberately attempted to mislead the committee -- is that from July 1986, from the time he tested positive through April of 1987 and subsequently, the only time when it is alleged that he has denied directly the use of anabolic steroids is sometime after 2 o'clock in the morning at this hearing at the Cambridge hotel.

5 THE COMMISSIONER: I think you're arguing, Mr. O'Sullivan.

10 MR. O'SULLIVAN: I'm just trying to say, in that context --

THE COMMISSIONER: That's an argument; that's not a question.

MR. O'SULLIVAN: I withdraw it, then.

15 MR. O'SULLIVAN:

Q. You did not intend, in making your notes, to record obviously the evidence verbatim?

A. No, far from it. I mean those notes --

20 Q. You have seven partial pages of notes for 10 or 12 hours?

A. Yeah, that's correct. A lot of the material that was presented there -- I mean when Dr. Dugal was presenting evidence on substances and testing and so on, I mean there was no way I could have taken notes. I

couldn't understand what he was talking about half the time.

Q. All right. And you have no notes of exploring that topic any further with Mr. Gray?

5

A. No. I asked the question and got the answer.

Q. You didn't want to ask him how could this be?

A. No.

10

Q. Any of that sort of thing?

A. No.

Q. Well, is there any reason why you didn't pursue it further?

15

A. I guess there isn't, except you ask a question like that, the answer is "no", and I take the answer at its face value and what he says to me: "No", he didn't take them.

20

You know, why would I follow the decision beyond that? The interesting thing from that hearing was that, I mean, I guess nobody really believed it, to be blunt, of himself or Mr. Spiritosa, although I did believe Mr. Dajia and made that point to my colleagues because some of Mr. Dajia's evidence was that he had been given some shots at the University of Texas by a physio, and I said to the other two people -- and I mean, I had seen his

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television interview where he was in tears, and so on, and I thought, you know, this kid just doesn't know what he's got. Someone has given it to him. He just doesn't know that it's happened to him, but --

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Q. If you had believed any of them, that they had not taken these substances, you would have not upheld the suspension?

A. That's correct.

10

Q. And would it not have been a reasonable thing then to do, if you thought you were confronted with a bald denial, is to explore that denial with the witness so that you could make some finding or some determination of their credibility?

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THE COMMISSIONER: But he's sitting as the appeals committee; he's not the prosecutor.

MR. O'SULLIVAN:

20

Q. But he's the investigator, and I think what he's said, Mr. Commissioner, was that there was free form in which the committee asked questions as well as Mr. Wedmann.

You didn't sit just as judges?

25

A. That's right. We generally let Mr. Wedmann, and then we would come in and ask the questions that we wanted answers to or that we saw arising.

THE COMMISSIONER: I see. He said he didn't pursue it further, Mr. O'Sullivan.

MR. O'SULLIVAN:

5

Q. On the assumption that that answer was received, was there any reason why you didn't pursue it further?

A. No. I guess maybe because it was 2 or 3 o'clock in the morning.

10

MR. O'SULLIVAN: Those are my questions.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you, Mr. O'Sullivan.

Mr. Pratt?

15

MR. PRATT: With brief trepidation, might I just have a couple of minutes?

THE COMMISSIONER: Did you say two?

MR. PRATT: Two minutes.

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--- EXAMINATION BY MR. PRATT:

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Q. Talking about fatigue, Mr. Savage, I think you are re-experiencing some of those feelings about now, probably.

The earlier exchange you had, sir, with Mr. Armstrong this afternoon, you were explaining that the out-of-competition testing program of the CTFA was not intended to anticipate or to stop incidents like the Ben Johnson incident in Seoul; and you indicated, and more or less left it, that you had -- I think I have your words more or less accurately -- that you had looked at other programs in other countries that might have accomplished that, but you left the point there, sir. I wonder if you might just amplify on what you had in mind when you said that?

A. Well, the U.S. program, for instance, is to test the athletes before they leave the country to a national event -- or to go to an international event. So prior to the Olympics, they will bring all their athletes and test them to make sure they are clean when they leave the country. I would suggest to you that that is an anti-embarrassment program; that's not an anti-drug program. We looked at that program, and it was a possibility, and we said that's not really what we were really attempting to do.

Q. Were you also aware of allegations of Soviet pre-testing --

A. No.

Q. -- and other Eastern Bloc pre-testing,

those types of programs?

5 A. No. The business on the U.S. testing actually came from some discussions that I had in Florence with Dr. Catlin. That's where I became aware of their program, and you sort of sit down and say, okay, what does this type of program accomplish? It just didn't accomplish what I felt we were setting out to achieve.

10 Q. And you felt that they were, I take it, avoiding embarrassment and not really concerned with cleaning it up, but simply avoiding the international 15 embarrassment of positive tests at major games?

A. Yes. The other thing that I was very upset with was the fact that if they caught someone, they were not applying the international sanctions. They were applying an internal sanction on the basis as was put to me by Dr. Catlin that this wasn't an official testing; this was an unofficial test, and so we banned him for six months; whereas our athletes, like Mr. Gray and Spiritosa, were well and fresh in my mind. We had applied a full international sanction to them, and I just didn't think it was fair that our athletes were being treated more harshly than other athletes.

20 MR. PRATT: Thank you. Those are my questions.

25 THE COMMISSIONER: Thank you, Mr. Pratt.

Any re-examination Mr. Bourque? Mr.
Armstrong?

Well, thank you very much for your
assistance, Mr. Savage.

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Tomorrow morning at 10 o'clock.

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--- Whereupon the proceedings adjourned until Thursday,
August 24, 1989 at 10:00 a.m.

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